S. HRG. 98-390

AMENDMENTS TO THE INDIAN LAND CONSOLIDATION ACT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

H.J. RES. 158

TO MAKE TECHNICAL CORRECTIONS IN THE ACT OF JANUARY 12, 1983 (PUBLIC LAW 97-459)

JULY 26, 1983
WASHINGTON, D.C.

U.S. GOVERNMENT PRINTING OFFICE
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CONTENTS

	Page
House Joint Resolution 158	2

WITNESSES

American Horse, Joe, chairman, Oglala Sioux Tribe	37
Anton, Gerald, president, Salt River Pima-Maricopa Indian Community, Sacaton, Ariz	31
Barbero, Carol, attorney	37
Barney, Mary, attorney, Sonosky, Chambers, Sachse & Guido	22
Cleveland, Matthew, land manager, Winnebago Tribe, Winnebago, Nebr	54
Felter Wayne, chairman, Northern Arapahoe Tribe, Wind River Reservation, Wyo	43
Prepared statement	44
Fritz, John W., Deputy Assistant Secretary for Indian Affairs, Department of the Interior	5
Prepared statement	22
Harjo, Suzanne, attorney, Fried, Frank, Harris, Shriver & Kampelman	40
Prepared statement	42
Hollow, Norman, chairman, Assiniboine and Sioux Tribes, Fort Peck, Mont.	34
Prepared statement	35
Iron Cloud, Paul, councilman and chairman of the Land Committee, Oglala Sioux Indian Tribe, Pine Ridge, S. Dak	37
Lawrence, Frank, member, Standing Rock Sioux Tribal Council, Fort Yates, N. Dak	51
Prepared statement	52
Nordwall, Wayne, staff attorney, Office of the Solicitor, Division of Indian Affairs, Department of the Interior	5
Smith, Joe, vice chairman, Northern Arapahoe Tribe	43
Snyder, Ben, Sr., councilman, Wind River Shoshone Reservation, Wyo	49
Sonosky, Marvin, attorney, Sonosky, Chambers, Sachse & Guido, Washington, D.C	23
Prepared statement	25
Ward, Alfred, councilman, Wind River Shoshone Reservation, Wyo	49

AMENDMENTS TO THE INDIAN LAND CONSOLIDATION ACT

JULY 26, 1983

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 11:15 a.m., in room SD-608, Dirksen Senate Office Building, Senator Mark Andrews (chairman) presiding.

Staff present: Paul Alexander, staff director; Peter Taylor general counsel; Virginia Boylan, staff attorney; John Chaves, staff attorney; Maria Mendoza, staff attorney; and Twinkle Thompson, staff attorney.

Senator ANDREWS. The bill we are considering this morning is House Joint Resolution 158, which is to make technical corrections to the Land Consolidation Act of 1983. This act passed during the lame-duck session at the end of last year, and some portions of it passed in a garbled form. While we have the opportunity to examine this measure again, we are going to address some of the concerns that have been raised about the act.

As originally envisioned in the Senate, this bill was designed to deal with a fractionized heirship situation for the Devils Lake Sioux of North Dakota. It provided legislative authority to the tribe to establish a land consolidation program and provided for the restriction on the inheritance of trust property, realty, on that reservation. The House added a provision which gave tribes nationwide authority that is very similar to that of the Devils Lake Sioux. Testimony today will explore the need for such legislation and the specific provisions of House Joint Resolution 158.

At this point, without objection, I will place a copy of House Joint Resolution 158 in the hearing record.

[The bill follows:]

II

98TH CONGRESS
1ST SESSION

H. J. RES. 158

IN THE SENATE OF THE UNITED STATES

APRIL 21 (legislative day, APRIL 18), 1983

Received; read twice and referred to the Select Committee on Indian Affairs

JOINT RESOLUTION

To make technical corrections in the Act of January 12, 1983 (Public Law 97–459).

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of January 12, 1983 (96 Stat. 2515; Public Law 97–459), is hereby amended as follows:

(i) At the end of section 204 change the period to a colon and insert the following: "*Provided,* That—

"(1) the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 per centum of the fair market value as determined by the Secretary;

"(2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;

"(3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land;

"(4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying lands under this section; and

"(5) any tribe may retain the mineral rights to such sold or exchanged lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands.

"(b) The Secretary must execute such instrument of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to an approved tribal land consolidation plan unless he makes a specific finding that such sale or ex-

change is not in the best interest of the tribe or is not in compliance with the tribal land consolidation plan.".

(ii) In section 206, strike all after "*Provided,* That in the event a tribe takes such action—" through the words

"(1) if an Indian dies intestate, the surviving non-Indian or nonmember spouse and/or children shall be entitled to a life estate in as much of the trust or restricted lands as he, she or they would have been entitled to take under existing law;"

and insert in lieu thereof:

"(1) if an Indian dies intestate, the surviving non-Indian or nonmember spouse and/or children shall receive a life estate in as much of the trust or restricted lands as he, she or they would have been entitled to take under existing law and the remainder shall vest in the Indians or tribal members who would have been heirs in the absence of a qualified person taking a life estate;".

(iii) In section 207, strike the word "descedent" and insert in lieu the word "descend".

Passed the House of Representatives April 19, 1983.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

Senator ANDREWS. Our first witness today will be Mr. John Fritz, who is Deputy Assistant Secretary of the Department of the Interior.

Welcome, we are glad to have you here.

Mr. Secretary, you may proceed. I have a problem, however, because I have to leave. I introduced a great piece of legislation that calls for warranties on defense procurement. The Defense Department is testifying downstairs. Immediately after that, I have to go to Mr. Baker's office. However, because we have several witnesses here today from all over the country, I would like Paul Alexander, the staff director, to conduct the hearings, so that we can get the information into the record and not inconvenience people who are here from around the country and cause them to either stay over an extra day or have the expense of another trip back.

Mr. FRITZ. Certainly.

Senator ANDREWS. Please proceed.

STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY WAYNE NORDWALL, STAFF ATTORNEY, OFFICE OF THE SOLICITOR, DIVISION OF INDIAN AFFAIRS

Mr. FRITZ. Thank you, Mr. Chairman.

Once again, I am pleased to be here to present the views of the Department on House Joint Resolution 158, to make technical corrections in the act of January 12, 1983, Public Law 97–459.

Appearing with me is Mr. Wayne Nordwall of the Office of the Solicitor. Mr. Nordwall is an attorney within the Division of Indian Affairs.

I would like to briefly summarize my written statement, which will be added to the record in total, I presume.

Mr. ALEXANDER [acting chairman]. Correct.

Mr. FRITZ. House Joint Resolution 158 is intended to merely correct errors in sections 204 and 206 of the Land Consolidation Act, Public Law 97–459. We recommend enactment of these technical corrections listed within the resolution.

The Department feels that the enactment of the Indian Land Consolidation Act was a legislative milestone for the Bureau of Indian Affairs and for Indian affairs in general. The act's purpose was to help resolve the problem of fractionated heirship of Indian lands. This fractionated heirship resulted from the various allotment acts, but primarily the Allotment Act of 1887.

The Indian Reorganization Act, brought about in part by the Meriam study, stopped allotment and authorized land exchanges and reacquisition of land for tribes and imposed some restriction on the devise of trust lands to non-Indians, but it must be remembered that the IRA was not a cure-all and applied only to those tribes who voted to accept it. Thus, fractionated heirship continued to be a problem throughout Indian country.

In the intervening 50 years a number of bills were introduced to alleviate the problem, and Public Law 97–459 culminated those many years of effort. As a result of its enactment, interim guidelines have been issued to area offices of the Bureau of Indian Affairs and proposed regulations are currently being readied for publication.

26-767 O - 83 - 2

It must be remembered that only one provision of Public Law 97–459 is mandatory for tribes, and that is section 207, which concerns the escheat of lands to tribes. It was the position of the Department, and still is, that this provision is essential and necessary.

Finally, Indian tribes who wish to take advantage of the other provisions of Public Law 97–459 must now enact appropriate tribal ordinances and plans in order to take advantage of it, since the other provisions are all voluntary.

At this point I would be happy to take any questions from you on behalf of the committee.

Mr. ALEXANDER. Thank you.

I would just like to clarify a point in your testimony. Is it not a fact, under existing law, that an Indian tribe cannot sell any part of its trust land without a special act of Congress?

Mr. FRITZ. That is correct.

Mr. ALEXANDER. We understand that in 1978 the Bureau of Indian Affairs, at the request of this committee, undertook a study of land ownership on Indian reservations. To what extent was that study completed?

Mr. FRITZ. I will have to defer to my technical expert here.

Mr. NORDWALL. The Bureau sent out questionnaires to all the area offices, and they were sent, in turn, to all of the agencies. The problem was that the agencies with the greatest amount of fractionated heirship problems also had their staff devoted full time to probating estates and maintaining land records. As a consequence, the areas with the biggest problem were unable to respond because of staff shortages. We had a response rate of probably 80 percent but the 20 percent that we really needed, which really dealt with the problem in depth, were never returned.

Mr. ALEXANDER. Would any of the material that you did get be useful for the record of this hearing, to demonstrate any of the complexities involved in dealing with the situation?

Mr. NORDWALL. We put the material that we got into a series of charts that listed the number of heirs in different types of holdings. That probably would be useful, if we still have them. I would have to check. We have hired some people to do the work——

Mr. ALEXANDER. If it is findable, we would like it for the record.

Mr. NORDWALL. OK.

[Subsequent to the hearing the following information was received for the record:]

The requested materials are quite voluminous and are available for review in the Acquisition and Disposal Branch of the Office of Trust Responsibilities, BIA Central Office, by agreement with the Committee.

Mr. ALEXANDER. You indicated that the administration of fractionated land is prohibitively complex. Would you expand on this for the record and give us an example or two of the extent of the fractionization of heirship interests?

Mr. FRITZ. The fractionization of land because of heirship is very complex because what happens is that, as the land is passed on from allotees to their heirs or descendents, it is possible to end up, within a few generations, having several large families involved in this. I know I talked to Mr. Nordwall previously about one instance where an in-

dividual, for example, in the upper Midwest has 16 separate parcels, the largest of which is about 44 or 45 square feet, if it were broken down into portions of an 80-acre parcel. This is found in a number of instances, particularly across the Great Plain area, where we have this unique problem. It is focused in the Billings area office and in the Aberdeen area office.

Heirship makes the administration and management of these small fractionated interests very difficult. Actually, it is essentially a three-fold problem of tracking the property and managing it, getting an economic return off of it, and then finally making payout. Sometimes the second part is very difficult as a result of not getting agreement among a large number of heirs to a lease or other income-generating use of property.

Mr. ALEXANDER. I would like to ask Mr. Nordwall if he has anything to add to that answer for our record on this matter.

Mr. NORDWALL. On fractionated heirship?

Mr. ALEXANDER. And the difficulties; yes.

Mr. NORDWALL. I think that is about it. The interests are becoming so small that it is becoming increasingly difficult to get agreement on rental. There are provisions in the statutes right now that if none of the Indian heirs are using the property the Secretary has the authority to lease it. However, if one heir, even if he is a minority owner, is on the property using it to the exclusion of the others, the Department of the Interior does not have the authority to remedy that.

We have many cases, and get a lot of mail, where a person will say, Joe so and so is on the property; he has not paid any rent on it. He will not agree to lease it but he is on it; what can we do? Our response is that we cannot do anything under existing law.

Mr. ALEXANDER. Mr. Fritz, we are aware from the prepared statements that the escheat provision of the act is rather controversial. In your opinion, is this provision constitutional? You may confer with Mr. Nordwall if you wish.

Mr. FRITZ. From the standpoint of looking at the escheat provision, and you are talking about the only substantive, nonvoluntary provision within the act, I think that—and I am relying upon the advice of counsel—I have been informed that this is constitutional. In particular, I refer to a case involving land on the Yakima Reservation: *Simmons* v. *Eagle Seelatsee.*

I think that section 207 really attacks the problem head on by preventing further devolution of de minimis interests in the trust lands, and returning those interests, those small interests, to the tribes.

I do not know if Mr. Nordwall would care to add anything more to that.

Mr. NORDWALL. I think the problem with section 207 is a matter of characterization. I do not think there is any way that anybody could argue from the individual's point of view that he is not being deprived of anything. However, as a legal point, section 207 does not take property away from anybody who currently owns it. What it does is set criteria for whether that property can be further devised, and it sets it at 2 percent of the total interest, and it sets some figure as far as income generation.

Therefore, no person will be deprived of any properties, and it does not raise any fifth amendment problems.

Heirship procedures are regulated by State statute or, in this case, by Federal law. In the *Simmons* case it was clearly held that Congress has the authority to set criteria as to what group or class of Indians are capable of inheriting property.

No person is being deprived of any land under section 207. What Congress has done is set criteria for the further devolution of those small interests. If it goes below that level, it goes back to the tribe.

Mr. ALEXANDER. What about the possibility of unexploited timber or mineral resources on the land which could make it potentially valuable in the future? Should some provision be crafted to take care of that potential?

Mr. NORDWALL. Yes; as to mineral interests, we had a meeting in May in Albuquerque, with BIA realty officers and any tribal people who wanted to participate.

The timber problem was raised by several people because of the current recession. At that meeting, it seemed to be the consensus of most people that if we changed the provision in section 7 to say something to the effect that $100 had to have been generated in one of the previous 5 years or one of the previous 7 years, or something like that, in order to allow some time to account for the lag in the economy, that would be helpful.

The minerals question creates a more difficult issue. If there are no known existing minerals, then you are asking whoever is in charge of prognosticating the future to look into a crystal ball to predict 30, 40, 50, 60 years down the road. That is practically impossible to legislate for, other than the same 1-in-5-year figure, if you have an oil well that has been shut down temporarily.

Mr. ALEXANDER. There are situations of which we are aware where there are known resources but they are not being exploited. It may not be economically feasible at the current time to mine iron ore in that particular area, for example. I know that is true in a number of Alaskan villages. What about that situation? We are not asking about something that is unknown.

Mr. NORDWALL. You are talking about reserving the mineral rights in either the tribe or the heirs, or whomever?

Mr. ALEXANDER. Right, as a possibility. I know that has been raised as an issue by a number of people.

Mr. NORDWALL. Of course, I cannot speak with great certainty, but one of the things that was originally discussed in section 207 was having an additional provision that said something to the effect, $100 generated in cash or a finding by the Secretary that the property is incapable of generating $100 per year, which would take into account that problem.

The issue with that was the matter of appraisal. It creates an extreme appraisal difficulty and additional administrative upkeep. For one reason or another, that provision was not enacted into section 207.

I think the Department at one point did have something like that in rough draft, but it never got in there.

Mr. ALEXANDER. If that, also, is findable in the files, we would like to see that for the record.

[Subsequent to the hearing the following information was received for the record:]

Following are two alternatives to section 207 which were proposed before enactment:

(4) No undivided fractional interest in any tract of trust of restricted land, located on a tribe's reservation, shall descend by intestacy or devise, but shall escheat to the tribe on whose reservation the land is located if such interest represents 2½ percent or less of the acreage of such tract unless such interest has generated, or the Secretary determines that it can generate, more than $10 in revenues per year. It shall be an irrebutable presumption that an interest with appraised value of less than $250 is incapable of generating the required minimum revenue.

Section 202. No undivided fractional interest in any tract of trust or restricted land within a tribe's reservation shall descend by intestacy or devise but shall escheat to the tribe on whose reservation the land is located if such interest represents 2½ per centum or less of the total interest in such tract and has been determined by the Secretary to be worth less than $250.

Mr. ALEXANDER. Do you have an estimate of the number of interests that would be escheated annually and the estimated value of such interests?

Mr. NORDWALL. No; the act has only been in effect since January and we have had, I would guess at this point—this would just be a guess—10 estates so far under 2 percent and under $100. The returns are just now starting to come in. We have no estimate right now of how many would fall under that.

Mr. ALEXANDER. Would it be possible to get an estimate or a projection by surveying the administrative law judges or some other mechanism?

Mr. NORDWALL. I think we can get an estimate from our agencies, because what a lot of agencies, in conjunction with the tribes, are trying to do is to identify estates that are currently below the 2 percent, $100 level and provide actual notice to those people so that they can engage in estate planning in order to avoid the consequences of section 207.

Mr. ALEXANDER. If such an estimate can be obtained within the next 30 days, we would like it for the record.

Mr. FRITZ. We will.

[Subsequent to the hearing the following information was received for the record:]

Attached is a copy of statistical data for twelve reservations with fractionated heirship problems. In discussions with Committee Staff it was agreed that this representative sampling would be sufficient to show the magnitude of the heirship problem. The figures relating to the Aberdeen Title Plant result from a changeover in computer systems. Although the figures may not be precise, they are reasonably accurate and do reflect the actual percentage of heirs who own one or more interests in a tract that is less than the 2 percent specified in section 207.

Heirship Consolidation Act Information

CODE	NAME	TOTAL TRACTS	TOTAL OWNERS	2 % OR LESS OWNERS	PERCENTAGE
Portland Title Plant					
101	Colville	3,539	18,094	7,543	47%
124	Yakima	4,466	34,833	16,768	48%
Billings Title Plant					
201	*Blackfeet	5,075	36,545	18,653	51%
202	*Crow	6,750	59,346	30,658	52%
206	*Fort Peck	7,114	43,950	19,330	44%
280	*Wind River	5,068	51,331	34,304	67%
Aberdeen Title Plant					
301	Fort Berthold	7,511	43,104	18,875	44%
302	Standing Rock	6,206	**108,032	**51,842	48%
340	Cheyenne River	9,404	** 41,516	** 8,347	20%
344	Pine Ridge	11,330	** 95,019	**48,392	51%
345	Rosebud	10,812	** 89,257	**50,384	56%
Public Domain - Aberdeen					
256	Turtle Mountain	378	1,018	296	25%

* 1978 Statistics

**Figures may be erroneous due to duplications in input - % would be correct.

Mr. ALEXANDER. Mr. Fritz, you mentioned in your statements that the Department has proposed regulations at least internally?

Mr. FRITZ. Yes; they are in the process of finalizing them. As I indicated in the previous hearing this morning, as we go over the hurdles that are obstacles to getting regulations published, sometimes the sprint for the hurdle turns into a slow crawl, and that seems to be where we are at this point.

Mr. ALEXANDER. Of course, we would be interested in a copy of those regulations.

Mr. FRITZ. We certainly would be happy to give them to you.

[Subsequent to the hearing the following information was received for the record:]

Real Estate Services

MAR 0 2 1983

Memorandum

To: All Area Directors
Attention: Realty Officers and Land Titles and Records Managers.

All Superintendents
Attention: Realty Officers

From: Deputy Assistant Secretary - Indian Affairs (Operations)

Subject: Interim Instructions in Implementing Sec. 207 of the Indian Land Consolidation Act of January 12, 1983.

On January 12, the Indian Land Consolidation Act (Title II of P.L. 97-459; 96 Stat. 2515) was signed into law. Sections 202 and 207 of this act read as follows:

Sec. 202. For the purpose of this title-

(1) "tribe" means any Indian tribe, band, group, pueblo, or community for which, or for the members of which, the United States holds lands in trust;

(2) "Indian" means any person who is a member of a tribe or any person who is recognized as an Indian by the Secretary of the Interior.

(3) "Secretary" means the Secretary of the Interior; and

(4) "trust or restricted lands" means lands, title to which is held by the United States in trust for an Indian or an Indian tribe or lands title to which is held by Indians or an Indian tribe subject to a restriction by the United States against alienation.

* * * * *

Sec. 207. No undivided fractional interest in any tract of trust or restricted land within a tribe's reservation or otherwise subjected to a tribe's jurisdiction shall descedent (sic) by intestacy or devise but shall escheat to that tribe if such interest represents 2 per centum or less of the total acreage in such tract and has earned to its owner less than $100 in the preceding year before it is due to escheat.

Section 207 effects a major change in testate and intestate heirship succession for certain undivided fractional interests in trust and restricted Indian land. Under this section, certain interests in land, as explained below, will no longer be capable of descending by intestate succession or being devised by will. Such property interests will, upon the death of the current owner, escheat to the tribe. It should be emphasized that no one currently owning property will be divested of that property.

Until regulations are promulgated, the following interim instructions relating to Section 207 will be in effect:

> "Tract" means a parcel of real property that is separately described for purposes of estate inventory.
>
> "Within a tribe's reservation or otherwise subjected to that tribe's jurisdiction" means within the exterior boundaries of a tribe's reservation as determined by the Secretary, plus any additional area over which a tribe has been determined by the United States to have civil jurisdiction.
>
> "Earned to its owner less than $100 in the preceding year before it is due to escheat" means that during the year immediately prior to the death of the decedent, $100 or more was <u>not</u> paid, or payable, to the decedent from his/her interest in a tract.

To assist Administrative Law Judges within the Office of Hearings and Appeals in the probating of trust and restricted estates of Indians dying after January 12, 1983 (the effective date of P.L. 97-459), the following data, in addition to that required by 43 CFR 4.210, must be furnished by the Superintendent:

> For each tract in which the decedent held an undivided fractional interest, the estate inventory must include the amount of that interest both in the standard fractional form and in decimal form rounded to the nearest seventh decimal place.
>
> For each tract (within a tribe's reservation or otherwise subjected to a tribe's civil jurisdiction) in which the decedent held an undivided interest of .0200000 or less, a statement of the amount of money earned from said interest which was paid or payable to the decedent during the one year period preceding his/her death. This amount must constitute only earned monetary compensation and will not include any increase in the value of the undivided interest resulting from appreciation and/or improvements. These tracts, ownership interests, etc., will be listed under a special heading on the estate inventory, or on a separate page of said inventory.

26-767 O - 83 - 3

Because Section 207 of P.L. 97-459 constitutes a major change in Indian heirship succession, Area Offices and Agencies are urged to provide all Indian landowners under their jurisdiction with notice of its effects.

For any Indian dying after January 12, 1983, possessed of an undivided trust and/or restricted interest in a given tract of land, such interest will escheat to the tribe if (1) the tract is within an Indian reservation or within an area subject to the civil jurisdiction of an Indian tribe, (2) the decedent's undivided interest amounted to two percent (.0200000) or less of the total, and (3) the decedent's interest earned for him/her less than $100 in cash during the one-year period preceding death.

To assure the effectiveness of a will or heirship succession under state law, any Indian owner within the above category (if he or she is concerned that the tribe rather than his or her heirs or devisees will take these interests) may purchase additional interests from coowners pursuant to 25 CFR 151.7 and thereby increase his/her ownership interest to more than two percent. Another alternative is for such an owner to convey his/her interest to coowners or relatives pursuant to 25 CFR 152.25 and reserve a life estate, thus retaining the benefits of the interest while assuring its continued individual, rather than tribal, ownership. A third alternative, if feasible, is to partition the tract in such a way as to enlarge the owner's interest in a portion of said tract.

Indians falling within the above category and who are presently occupying, or in any other way using, the tract in question should especially be advised of the aforementioned alternatives.

P.L. 97-459 augments and actually increases the need for accurate accountability and timely posting of trust and restricted title. All personnel within the Bureau of Indian Affairs who are responsible for these activities will maintain the highest standards possible in order to avoid the necessity for probate modifications. Such modifications, depending on the location of the tract in question, the size of the interest, and/or the earned income, could easily change the line of descent and, therefore, the ownership of that interest. Any long-standing ownership error, originating in wrongful reporting of any of the above factors, could make the Bureau of Indian Affairs liable to suit especially where income has been derived from the inherited interest and spent by the incorrect owner.

It is anticipated that the Office of Hearings and Appeals will soon be meeting to address the need for regulatory changes brought about by Section 207 of P.L. 97-459. Until such time, the above instructions will remain in effect. Please refer any questions to our Division of Real Estate Services.

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:

Real Estate Services
Acq. & Disp.

MAR 17 1983

Memorandum

To: All Area Directors
Attention: Realty Officers

All Superintendents
Attention: Realty Officers

From: Deputy Assistant Secretary - Indian Affairs (Operations)

Subject: Proposed Amendments to 25 CFR 151, 152, Resulting from Enactment of P.L. 97-459

By memorandum dated March 2, 1983, interim instructions in implementing Section 207 of the Indian Land Consolidation Act of January 12, 1983, were mailed to all Area Directors and Superintendents. These instructions, plus the subject proposed revisions and amendments to the applicable sections of 25 CFR 151 and 152, were compiled by a special work group composed of several Realty Officers who recently met in Phoenix, Arizona, for the purpose of identifying the necessary amendments and guidelines needed.

We invite your comments regarding these amendments and we would like to point out that they have been proposed as minimal amendments necessary to incorporate the purposes and intent of the act into our regulations. We welcome, for review, any other suggested revisions or additions for clarification purposes, etc. Comments received will be included as an agenda item for discussion by the appropriate panel at the Real Property Manager's Workshop to be held in Albuquerque, New Mexico, May 9-11.

The affected sections of 25 CFR 151 and 152 and proposed revisions follow.

151.2 Definitions.

(h) "Tribal consolidation area" means the area or areas described in the tribe's land consolidation plan

(i) "Land consolidation plan" means a detailed plan devised by a tribe and approved by the Secretary which contemplates the acquisition of land in a specified area or areas within the exterior

boundaries of the tribe's reservation within which tribal land ownership will be concentrated. If the reservation does not encompass an area sufficient to permit a meaningful consolidation area or if a tribe does not have a reservation, the plan may contemplate the acquisition of land in a specified area adjacent to the tribe's reservation or in a specified area suitably located to serve as a reservation for the tribe.

151.5 Trust acquisitions under Section 5 of the I.R.A. The provisions of section 5 of the Act of June 18, 1934 (48 Stat. 985), shall apply to all tribes, notwithstanding the provisions of section 18 of such Act: Provided, That nothing in this section is intended to supersede any other provision of Federal Law which authorizes, prohibits, or restricts the acquisition of land for Indians with respect to any specific tribe, reservation, or state(s).

151.7 Acquisition of Land in multiple ownership.

(a) Acquisition of a fractional land interest by an individual Indian or a tribe in trust status can be approved by the Secretary only if:

(1) The buyer already owns a fractional interest in the same parcel of land; or

(2) The interest being acquired by the buyer is in fee status; or

(3) The buyer offers to purchase the remaining undivided trust or restricted interests in the parcel at not less than their market value; or

(4) There is a specific law which grants to the

particular buyer the right to purchase an undivided interest or interests in trust or restricted land without offering to purchase all of such interests; or

(5) The owner of a majority of the remaining trust or restricted interests in the parcel consent in writing to the acquisition by the buyer.

(b) Any Indian tribe may purchase at not less than fair market value all of the trust or restricted interests in any tract of trust or restricted land within the tribe's reservation or otherwise subjected to the tribe's jurisdiction with the consent of over 50 per centum of the owners of such trust or restricted land or with the consent of the owners of over 50 per centum of the trust or restricted interests in such tract provided that:

(1) no such tract shall be acquired by an Indian or Indian tribe over the objection of three or less owners owning 50 per centum or more of the total interests in such tract;

(2) any Indian owning any undivided interest in, and in actual use and possession of such tract, may purchase such tract by matching the tribal offer;

(3) this section shall not apply to any tract of land owned by less than fifteen persons; and

(4) all purchase and sales initiated under this section shall be approved by the Secretary.

152.1 Definitions. Subsections (k) and (l) are not in accord with existing published regulations but are based on pending amendments to Part 152 that are to be published for rulemaking.

(k) "Land consolidation plan" means a detailed plan devised by a tribe and approved by the Secretary which contemplates the acquisition of land in a specified area or areas within the exterior boundaries of the tribe's reservation within which tribal land ownership will be concentrated. If the reservation does not encompass an area sufficient to permit a meaningful consolidation area or if a tribe does not have a reservation, the plan may contemplate the acquisition of land in a specified area adjacent to the tribe's reservation or in a specified area suitably located to serve as a reservation for the tribe.

(l) "Tribal consolidation area" means the area or areas described in the tribe's approved land consolidation plan.

152. 21 Sale or exchange of tribal land.

(a) Certain tribal land may be sold or exchanged pursuant to the Acts of February 14, 1920 (41 Stat. 415; 25 U.S.C. 294); June 18, 1934 (48 Stat. 984; 25 U.S.C. 464); August 10, 1939 (53 Stat. 1351; 25 U.S.C. 463(e)); July 1, 1948 (62 Stat. 1214); June 4, 1953 (67 Stat. 41; 25 U.S.C. 293(a)); July 28, 1955 (69 Stat. 392), as amended August 31, 1964 (78 Stat. 747; 25 U.S.C. 608-608c); June 18, 1956 (70 Stat. 290; 25 U.S.C.

403a-2); July 24, 1956 (70 Stat. 626); May 19, 1958 (72 Stat. 121; 25 U.S.C. 463, Note); September 2, 1958 (72 Stat. 1762); April 4, 1960 (74 Stat. 13); April 29, 1960 (74 Stat. 85); December 11, 1963 (77 Stat. 349); August 11, 1964 (78 Stat. 389); January 12, 1983 (96 Stat. 2515), and pursuant to other authorizing acts. Except as otherwise provided by law, and as far as practicable, the regulations in this Part 152 shall be applicable to sale or exchanges of such tribal land.

(b) Sales and exchanges of tribal lands or interests in land in accordance with a tribe's land consolidation plan are authorized by the Act of January 12, 1983 (Indian Land Consolidation Act) provided that:

(1) the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 per centum of the fair market value as determined by the Secretary;

(2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchange;

(3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other

land or interests in land;

(4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section, consisting of the proceeds of the land sales and exchanges, and shall release such funds only for the purpose of buying lands under this section; and

(5) any tribe may retain the mineral rights to such sold or exchanged lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands.

Mr. ALEXANDER. Do you consider the act to be effective over the 6 or 7 months that it has been in existence? Do you have a projection on whether or not this will be an effective piece of legislation?

Mr. NORDWALL. As Mr. Fritz pointed out, sections 204, 205, and 206 were voluntary.

Mr. ALEXANDER. Exactly.

Mr. NORDWALL. We have had a few inquiries from a few tribes that were upset that it may conflict with their constitutions or some other tribal programs. For instance, the Rosebud Sioux came in and were concerned that this might conflict with the TLE. Once it was explained that these are entirely voluntary and that the tribe does not have to amend its constitution or does not have to enact one of these ordinances, a lot of the concern about those three sections died down.

So far, we have not gotten any requests from any tribes for an ordinance on any one of those three sections.

Mr. FRITZ. We have had a number of comments, but I cannot say that the comments have been other than discussions of the implications of the language and comments relating to the determination of whether they are going to take advantage of the various sections. I cannot say that the comments have been complaints about the process on the interim guideline at all. At this point I cannot characterize it as that.

Mr. ALEXANDER. With respect to the mandatory provision of the statute, however, how has that operated to date?

Mr. NORDWALL. At the meeting in May, that was the only provision that raised genuine concern. Some people were worried about the impact of the other sections, but inasmuch as they are voluntary and the tribe has some flexibility within the parameters in those three sections to do what they want to do, anyway, it was not really a giant concern.

On section 207, we have not gotten an overwhelming amount of opposition from any individuals yet. That is possibly because they are not fully aware of it. We are attempting to make them aware of it. We have sent out a letter which we tried to put in plain English, explaining what the process will be and some alternatives that they can engage in prior to their death to take care of those interests. We have not gotten a great deal of feedback from that.

A few tribes have been concerned that they do not particularly like the fact that their members are perceiving this as having property removed from them. They are concerned there is no compensation provision in there. A few of them have asked whether or not they can voluntarily provide compensation for those interests, and the answer, of course is yes. That is the only involuntary provision. There is nothing else we can tell them. If they want to provide compensation, they can. There is no money in the bill for the administration to use for compensation.

Mr. FRITZ. I think there is a great deal of concern that had been expressed to me, particularly when we were at the policies and issues briefing during the month of May. The Assistant Secretary and I went out, and we heard comments from tribal leaders in private sessions saying that they were essentially expressing concern and attempting to delve into how they were going to handle the problem with section 207 administratively on their own reservations.

The question of payment I think is one that is causing some concern to the people.

26-767 O - 83 - 4

Mr. ALEXANDER. To the extent possible within a 6- or 7-month period, could you give us for the record the actual occurrences under this provision in terms of value——

Mr. FRITZ. Under section 207?

Mr. ALEXANDER [continuing]. The number of occurrences, the number of tribes that have been involved, and so on?

Mr. FRITZ. Yes.

[Subsequent to the hearing the following information was received for the record:]

The number of interests that have escheated or are in the process of being probated (as of August 26, 1983) are as follows:

	Number
Aberdeen area	850
Albuquerque area	5
Anadarko area	165
Billings area	292
Minneapolis area	158
Muskogee	1
Navajo area	110
Phoenix area	92
Portland area	466
Sacramento area	6
Total	2,145

Mr. ALEXANDER. We thank you both for your appearance today. We appreciate the time you have spent with us.

Mr. FRITZ. Thank you very much.

[The prepared statement follows:]

PREPARED STATEMENT OF JOHN W. FRITZ, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee, I am pleased to present the views of the Department on H.J. Res. 158, "To make technical corrections in the act of January 12, 1983 (Public Law 97–459)."

We recommend enactment of H.J. Res. 158.

Section 1 would insert in section 204 of Public Law 97–459 a proviso which was mistakenly included in section 206 of the act and would strike the erroneous proviso from section 206. In addition, an insertion in section 206 would clarify the disposition of remainder interests after expiration of life estates.

Mr. Chairman, we strongly believe the enactment of the "Indian Land Consolidation Act" (P.L. 97–459), was a legislative milestone in Indian affairs.

The need for land consolidation legislation had its origin primarily in the various allotment acts, especially the general allotment act of 1887 (25 U.S.C. 158). The allotment acts provided that Indians would be individually allotted portions of their tribal lands and that surplus tribal lands would be sold to homesteaders or others. This eventually resulted in a "checkerboard" pattern of Indian and non-Indian land ownership within many reservations, and in a complex pattern of "fractionated" land ownership in units that could not be operated economically.

This particularly serious problem of fractionated heirship resulted where the heirs or devisees of allotment owners received an undivided interest in the allotment. Through the generations, upon the death of successive heirs or devisees, ownership passed to scores of hundreds of individuals, resulting in numerous tracts of land too small or unproductive to be an economic unit. For the Bureau of Indian Affairs, the administration of such land is prohibitively complex, as the Bureau is responsible for distributing the income received from such land among the numerous owners. The fractionated ownership patterns also make it very difficult, if not impossible, to utilize the land to the economic benefit of any of the owners.

For these reasons, a comprehensive land consolidation authority for tribes is necessary. Existing statutory authority used most often in this connection is provided by sections 4 and 5 of the Indian Reorganization Act (25 U.S.C. 461), and section 1 of the Oklahoma Indian Welfare Act (25 U.S.C. 501). However, these acts do not include all the tribes served by the Secretary of the Interior. With respect to those tribes to which such acts do apply, these statutes give the Secretary authority to accept gifts of land for tribes and allow exchanges of lands, but do not provide authority for the sale of tribal lands held in trust by the United States. In recent years, a number of tribes have requested and received special legislative authority to carry out land consolidation programs. It was the intent of P.L. 97–459 to provide a single comprehensive law governing land consolidation.

Since its enactment interim guidelines have been issued for the implementation of section 207 of the act and proposed regulations are being readied for publication.

We believe that the act is workable, and is a necessary addition to Indian land laws. We favor the law and its purposes.

Mr. Chairman, this concludes my prepared statement. I will be glad to answer any questions you or members of the committee may have.

Mr. ALEXANDER. Our next witnesses this morning are Paul Iron Cloud from the Oglala Sioux; Norman Hollow from Fort Peck, Mont.; Marvin Sonosky and Gerald Anton from Sal River Pima-Maricopa Indian Community.

Mr. SONOSKY. Mr. Alexander, I have with me delegates from Fort Peck, Wind River, and Standing Rock.

Mr. ALEXANDER. They may come up to the table or you may introduce them.

We will start with you, Mr. Sonosky.

Before we begin, I will say that Peter Taylor, our general counsel, will do the questioning.

STATEMENT OF MARVIN SONOSKY, ATTORNEY, SONOSKY, CHAMBERS, SACHSE & GUIDO LAW OFFICES, WASHINGTON, D.C., ACCOMPANIED BY NORMAN HOLLOW, CHAIRMAN, ASSINIBOINE AND SIOUX TRIBES, FORT PECK, MONT.; ALFRED WARD, MEMBER, SHOSHONE BUSINESS COUNCIL, WIND RIVER RESERVATION, WYO.; BEN SNYDER, SR., MEMBER, SHOSHONE BUSINESS COUNCIL, WIND RIVER RESERVATION, WYO.; FRANK LAWRENCE, MEMBER, STANDING ROCK SIOUX TRIBAL COUNCIL, FORT YATES, N. DAK.; AND MARY BARNEY, ATTORNEY, SONOSKY, CHAMBERS, SACHSE & GUIDO LAW OFFICES

Mr. SONOSKY. Mr. Chairman, may I introduce Mr. Norman Hollow, the chairman of the Assiniboine and Sioux Tribes, Fort Peck Reservation; Mr. Alfred Ward, a member of the Shoshone Business Council, Wind River Reservation; Mr. Ben Snyder, Sr., a member of the Shoshone Business Council; and, at the end, Mr. Frank Lawrence, of the Standing Rock Sioux Tribal Council of North and South Dakota; and my colleague, Ms. Mary Barney.

Mr. ALEXANDER. Do you have any clients who are not here?

Mr. SONOSKY. I like to get a crowd for you.

Mr. ALEXANDER. We appreciate it.

Why don't you proceed and summarize your statement. As indicated before, all prepared, written statements will appear in the record as if given.

Mr. SONOSKY. I am going to summarize my statement and try to keep it fairly short.

First, in response to the testimony given by the Deputy Secretary, there should be two answers, if I understood him correctly. He stated, and the Chair stated, that the problem was to resolve the fractionated heirship situation, at least to ease it.

One of the complaints that Mr. Nordwall set out was that they are having difficulty getting heirs to agree to lease land or rentals and matters of that kind. The fact of the matter is that Congress has given the Department the authority to lease land without regard to the heirs, but there Congress is talking about the surface of land.

So far as fractional heirship is concerned, with respect to administering the land, there is no problem. The only problem that arises is the one that he mentions with respect to dividing the proceeds that come from the income from the land. That is not an uncommon problem. Twenty-five years ago he would have had better grounds for complaint, but since the computer has been invented, it is not a great deal of trouble to punch out checks.

I can tell you that oil companies that deal with royalties are dealing with multiple heirs, not in the dozens but in the hundreds. I have preserved one check that I got from an interest I have in an oil and gas well from Gulf Oil Co. for 1 cent. It does not make any sense for Gulf to send me a check for 1 cent, and I did not cash it. However, it demonstrates that in the routine of doing business you have an item that comes up and the computer says 1 cent, it spits out a check for 1 cent. It should be no problem.

I am not here trying to justify the issuance of administrative checks for small amounts, but that should not be a reason for imposing on the Indian people an obligation to get rid of this land, to get rid of their minerals, to get rid of their timber.

If we are going to try to work out a fractionated cure, we ought to keep in balance the objective that we have against the cost to the individual Indian.

This legislation is designed for administrative convenience. It is designed to resolve an administrative problem. It should not be done at the expense of the substance of the Indian's heritage.

I have submitted to the committee a proposed redraft of what I think this bill might have looked like if we had had hearings on it and if the tribes had had an opportunity to be heard.

I cannot give much weight to Mr. Nordwall's statement as to what he thinks the reaction of Indians is to this because the Department has not brought this to the Indian people.

When a group of Bureau officials gather together in a meeting or seminar or workshop and talk to each other, that is not the expression of the Indian people. You have to bring it to the people in the field.

This is a proposition that affects every Indian almost, and it affects vast amounts and tremendous values in terms of hundreds of millions of dollars of property. These people should have a right to hear what is going to be done in order to help the Department of the Interior resolve its administrative problem.

Now, I furnished my memorandum and the proposed redraft to the committee late yesterday. I do not know if you have had a chance to

look it over, but it might be more profitable, if you have, for you to ask me questions than for me to try to outline what is in here. I think you are generally familiar with my views.

Mr. TAYLOR. I would like to comment, Mr. Sonosky, that I did read your memorandum yesterday. I think it is very instructive and helpful. It is unfortunate we were unable to have hearings in the lameduck session, as we are having them here today.

I believe a lot of the reaction in Indian country is stemming from the fact that we did not have these hearings. As a result, this legislation is not fully understood in the Indian country. That is an unfortunate event that transpired because of the very late hour in which this legislation was adopted.

On the other hand, I think there are some very constructive recommendations that are contained in your memorandum and in a number of the other statements that I read last night. I expect I will be reading some that we received this morning.

I hope that we will be able to improve this legislation.

I would comment on your point about reducing the fractionation of the heirship lands. As I read through your memorandum, I concluded that you do support the concept of attempting to bring about some reduction in the fractionation and some unification of titles. Is that correct?

Mr. SONOSKY. Yes. I think that is a goal to be accomplished, if we do not have to sacrifice substance to do it. I think it can be done.

Mr. TAYLOR. I fully agree, and I think that is why we are having the hearings here today.

Mr. SONOSKY. I should add to that that my clients do not necessarily agree with me.

Mr. ALEXANDER. We will get to some of those specifically in a little while.

[The prepared statement follows:]

PREPARED STATEMENT OF MARVIN J. SONOSKY OF SONOSKY, CHAMBERS, SACHSE & GUIDO, WASHINGTON, D.C.

My name is Marvin J. Sonosky. I am a partner in the law firm of Sonosky, Chambers, Sachse & Guido in Washington, D.C.

I particularly wish to thank the Chairman and the Committee for arranging for this hearing. The Committee was good enough to hold this hearing on H.J. Res. 158 to afford tribes their first opportunity to express their views before this Committee with respect to the substance of Title II of P.L. 97–459, referred to as the Indian Land Consolidation Act. H.J. Res. 158 is designed to recast and realign portions of Title II and to make other changes.

Prior to the scheduling of this hearing I submitted rather extensive memoranda to the Committee and was privileged to participate in a joint meeting of members of the staffs of the Senate and House Committees to discuss the concerns of the tribes and their people. Partially on the basis of that joint meeting, and on further study and reflection, I have prepared and annexed to this statement a redraft of Title II. In this connection may I mention that all references to Title II, are to Title II unscrambled, including those changes contained in H.J. Res. 158.

The primary objective of Title II is to ease the fractionated heirship problem. Essentially this feature of Title II is an enlargement of the existing regulatory authority permitting tribes to purchase one or more fractional interests. (25 CFR 151.7.) (See p. 5, infra.) Title II would accomplish this by permitting the tribe to acquire all fractional interests, including minerals, with the consent of a majority of the fractional interest owners or a majority of the fractional interests. In addition, Title II empowers the tribal governing body to sell or exchange any tribal lands, with the minerals.

Title II also contains an inheritance feature that has only marginal impact on the fractional interests problem. Under the heirship feature tribes are authorized to limit the right of their members who die intestate to pass their land either to members of the tribe or to other Indians. Under Title II, a tribe may place the same limitation on the right of its members who devise their trust land under an approved will, except that such a devise is void as to the nonmember devisee, Indian or nonIndian, only if the tribe purchase the ineligible interests within a specific period. In both the intestate and the testate situations, provision is made for a life estate in "the surviving nonIndian or nonmember spouse and/or children."

Without getting involved in particular language of Title II, I should like to address myself to the six features of Title II that—

1. Permit tribes to sell or exchange any tribal land;

2. Permit tribes, subject to certain restrictions, to purchase all fractional interests where 15 or more heirs hold title and either over 50 percent of the owners, or over 50 percent of the ownership interests consent;

3. Permit tribes to be divested of their mineral interests in tribal land sold or exchanged, and permit individual Indians to be divested of their mineral rights in fractional interests sold to the tribe;

4. Permit tribes to prevent a member of the tribe, but not an Indian nonmember, from passing trust land by inheritance to a nonIndian, or to an Indian nonmember, with provision for life estates in "the surviving nonIndian or nonmember spouse and/or children";

5. Permit tribes to take by escheat any undivided interest in reservation trust land that represents 2 percent or less of the total acreage of the tract and has earned less than $100 in the "preceding year before it is due to escheat";

6. Defines "Indian" as a member of a tribe or a person "recognized as an Indian by the Secretary of the Interior."

I shall briefly address each of these items.

1. The feature of Title II permitting tribes to sell or exchange tribal land (Section 204).

The Title II power to sell or exchange tribal land extends to "any tribal land" and includes minerals. This broad language is not necessary to effectuate the stated objective of easing the fractional heirship problem. Tribes are concerned that such power exposes them to administrative and political pressures to sell tribal land under the guise of curing fractional heirship.

I am informed that the intent was to limit the power to the sale or exchange of isolated tracts of tribal land. The proceeds from the sale of such tracts would be used exclusively for the purchase of land within the tribe's consolidated area. "Isolated tract" may be defined as a tract wholly surrounded by fee land. That definition may be added to Title II or explained in the Committee report.

The annexed redraft of Title II expresses these views.

2. The feature of Title II permitting tribes to purchase fractional interests (Section 205).

The existing authority to acquire fractional interests. If I understand the regulation in force before and after Title II, a tribe is empowered: to purchase one or more fractional interests if the tribe already owns a fractional interest in the tract; or to purchase an interest held in fee; or to purchase all of the undivided interests presumably with the consent of all owners; or to purchase one or more undivided interests if authorized by "specific law", or if the majority of the trust interests other than the one under acquisition consent to acquisition. (25 CFR 151.7.)

Section 205 expands the existing authority. Section 205 apparently is intended to expand the regulatory authority to permit a tribe to purchase fractional interests where either 50 percent of the heirs, or 50 percent of the interests in the land, agree to the sale, where the tribe purchases "all" of the fractional interests, and where there are 15 heirs or more. This new power to purchase is subject to two major restrictions. First, even if the tribe succeeds in getting the consent of over 50 percent of the heirs for the purchase of "all" fractional interests, the tribe's right to purchase can be defeated by objection from 3 or less owners of over 50 percent of the interests. Second, a tribe's right to purchase may be defeated by any Indian owner "in actual use and possession" who matches the tribal offer, regardless of whether the Indian is a member or nonmember, regardless of how small the Indian's interest, no matter when the Indian went into use and possession, or whether his use and occupancy was bona fide.

Title II should make plain that Section 205 is in addition to all other authority provided in existing law. We have so provided in the opening sentence of the annexed suggested redraft of Section 205 of Title II.

The consent of a majority of the interests should be required. Section 205 permits the sale of fractional interests with the consent of a majority of the fractional interest owners or with the consent of a majority of the fractional interests. From time to time Congress has authorized the disposal of 100 percent of the undivided individual interests in trust land with the consent of the Indian owners of a majority interest in the land. (e.g., Act of May 1, 1958, c. 72, sec. 5, 92 Stat. 99.) But we are unaware of any statute authorizing the sale of 100 percent of the interests with the consent of a majority of the owners who own less than a majority interest in the land. Title II deals with private property rights. If the passage of title to 100 percent of the interests is to depend on the consent of a majority, it must be the consent of those individuals owning a majority of the property interests. To use the consent of the owners of a minority interest is unjust, unfair, and courts future litigation, since it is without a rational basis for divesting title.

The annexed redraft of Section 205 would permit the sale of undivided interests only with the consent of over 50 percent of the interests regardless of the number of owners. This eliminates the need for Section 205(1), under which 3 or less owners of over 50 percent interests can defeat the sale.

The tribe's right to purchase should apply to any not "all" fractional interests and regardless of the number of heirs. This would be simply preventative. The sooner fractionated interests are fed into the tribe the sooner the problem is resolved. There is no good reason for waiting until the ailment has developed into a serious disease before applying the cure.

The annexed redraft of Section 205 eliminates the 15-heir limitation and permits the tribal purchase of any fractional interest.

The right to match the tribal offer should be limited to a bona fide homeowner. Title II, Sec. 205(2) permits any owner of an interest to match the tribe's offer, if the owner was in actual use or possession. As it reads, the language would permit an interest owner, Indian or non-Indian, to match the tribe's offer, if the owner was in "actual use and possession", even though the owner went into possession after the tribe evinced an interest in the acquisition. We understand that such was not the intent of the drafters. Rather, the intent was to protect those Indian owners of a fractional interest who had their homes on the land and were using the property. This is an equitable viewpoint.

The annexed redraft of Section 205 carries out the intent by limiting the right to match the tribal offer to an Indian who continuously used and occupied the tract as his home for at least five years prior to the tribe's offer to purchase.

The annexed redraft of Section 205 also eliminates Section 205(4) of Title II, calling for approval by the Secretary. The requirement for approval is moved to Section 209, which covers the subject.

3. The feature of Title II permitting tribes and individuals to be divested of their mineral rights (Sections 204 and 205).

Under Section 204 tribes may sell or exchange tribal land, including minerals. There is no valid reason for selling or exchanging tribal minerals. Minerals, particularly undeveloped protential oil and gas lands, simply are not susceptible of an informed or valid market value appraisal. There is no reason for a tribe to part with title to potential minerals. To retain the minerals in the tribe can in no way result in an heirship problem, or conflict with the unspoken legislative objective of relieving the Bureau from administering fractional interests.

With respect to individual Indian owners, Title II is silent as to minerals. This means the minerals would pass to the tribe without payment. We are familiar with the supervised sales of the 1950's when the Bureau encouraged Indians to sell their allotments. The minerals went with the land even though the minerals were not appraised, primarily because the minerals were not susceptible of valid appraisal. I doubt that tribes would wish to acquire mineral interests from their members under such circumstances. This is particularly true on reservations in North Dakota, Montana and Wyoming where there is oil, gas and other mineral activity on the reservations.

The Bureau explains that fractional heirship presents a problem because "the Bureau is responsible for distributing the income received from such land among the numerous owners." (H. Rept. 97-908, p. 18 (1982).) In other words, the

Bureau has to keep too many accounts and write too many checks. The Bureau's problem arises in the administering of the income from grazing and agricultural leases held in fractional ownership. That problem does not exist with respect to minerals. Where minerals are undeveloped there are no proceeds and no fractional interest problems. Where minerals are developed, values are so high that the Bureau does not complain about fractional heirship problems. For that reason Indians should not be divested of their fractional interests in minerals. The tribal acquisition of such interests should be limited to the surface only.

The annexed redraft of Title II in Section 204(a) reserves all minerals to the tribe where tribal land is sold or exchanged, and Section 205 limits the tribe's acquisition to the nonmineral interests in any trust or restricted land acquired under Title II.

4. The inheritance feature of Title II (Section 206).

Under Title II, Section 206, a tribe, if it so wishes, may adopt an ordinance providing "that nonmembers of the tribe or non-Indians" may not inherit any interest in a member's trust land.

The inheritance restriction should extend to all Indians owning trust land on the reservation. Limiting the inheritance restriction to a member's trust land seems inconsistent with the objective of reducing the number of fractional interests. The trust land of nonmember Indians should be included. Moreover, tribes are unlikely to adopt a discriminatory ordinance that subjects tribal members to restrictions, but leaves nonmember Indians free to pass their reservation trust land to their heirs without regard to the tribal ordinance. Title II, as passed by the House, applied the tribal ordinance to all owners of trust land on the reservation, members and nonmembers. The Senate, without explanation, relieved nonmember Indians from the tribal restrictions on inheritance and confined those restrictions to member's lands. The tribes are not aware of any valid reason for such discrimination and I am sure the tribes justifiably oppose it.

Section 206 should be amended to permit the tribal inheritance ordinance to include nonmembers' trust land on the reservation. The annexed redraft accomplishes this.

The life estate provisions should be reconsidered. (Secs. 206(2)(3).) Where a tribe does adopt a restrictive inheritance ordinance and the members [1] dies intestate, Section 206(1), as modified by H.J. Res. 158, would provide for life estates for the "surviving nonIndian or nonmember spouse and/or children" in what would have been their inherited interest. The remainder would vest "in the Indians or tribal members who would have been heirs in the absence of a qualified person taking a life estate." If there is no eligible heir, title escheats to the tribe subject to the same life estates. (Section 206(2).)

But, if a member [1] dies with an approved will devising interests to persons ineligible under the tribal ordinance, those persons under Section 206(3) take title unless, while the estate is in probate, the tribe acquires the interest by paying the fair market value as of the date of death, with the option in "any non-Indian or nonmember spouse and/or children", either to retain a life estate in their interest or to be paid by the tribe "for the value of such interests".

The clause "any non-Indian or nonmember spouse and/or children" is ambiguous and susceptible of more than one meaning. All nonIndians are nonmembers. A nonmember spouse may be nonIndian or Indian. The phrase "and/or children" may refer to the children of a nonIndian or to the children of an Indian nonmember.

I believe the Committee will hear varying views from the tribal witnesses on this issue. From a legislative viewpoint, if the objective is to eliminate fractional interests, there would seem to be no valid purpose in burdening the land with numerous life estates that will extend over the lives of two generations. For that reason, the annexed redraft has limited the life estates to the surviving ineligible spouses only. (Sections 206(1)(3).) However, this is not to be taken as expressing the views of tribal clients.

The question may also be raised as to the wisdom of burdening the land with the multiple life estates of heirs with tiny interests who may be nonresidents of the reservation, with established homes elsewhere. Consideration should be given to limiting the right to life estates to heirs who, occupied the tract as a home at the time of the decedent's death, and who, if they had been eligible, would have inherited a substantial interest—at least 25 percent.

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[1] "Indian" in the annexed redraft.

The annexed redraft of Sections 206(1)(3) restricts the life estate to the surviving spouse, but pending consultation with our clients, does not contain requirements of a substantial heirship interest and prior use of the property as a home.

5. The escheat feature of Title II (Section 207).

Title II authorizes escheat to the tribe where the interest passing either by descent or by approved will, represents 2 percent or less of the total acreage in the tract and that fractional interest has earned the "owner" less than $100 in the year preceding the potential escheat.

No mineral interests should escheat and no nonmineral interest should escheat unless the Secretary determines that such interest is not capable of producing income of $100 per year. I believe the Committee will find considerable tribal objection to the idea of escheat. But, if the escheat feature remains it should be modified. The income test should be changed. First, the test should be limited to the nonmineral interests. A small interest in undeveloped and nonincome producing mineral land may be highly valuable and should not be lost because it did not produce $100 in income in the year preceding the decedent's death and its potential for future income cannot be measured.

Second, as to nonmineral interests, the conversion to acreage is irrelevant and there is no valid basis for limiting the income test to the year preceding the Indian's death. Potential income and value should control. As to grazing or agricultural land a drought, or severe market conditions, or a unique situation arising from litigation or otherwise, might result in less than $100 income in the particular year preceding the decedent's death. Also, timber land awaiting logging may be highly valuable but produce no income until the timber is cut. Property rights should not depend on the particular 12 months preceding the decedent's passing.

For these reasons, the annexed redraft modifies the income test in Section 207 to omit the acreage conversion and to leave with the Secretary the determination of whether each fractional holding in the nonmineral interests in the land is capable of producing as much as $100 per year in income.

6. The definition of "Indian".

Title II defines "Indian" as a member of a tribe or a person "recognized as an Indian" by the Secretary. This means any person who is not a member of a tribe is not an Indian unless the Secretary "recognizes" such person as an Indian. Indian parents have no way of obtaining an advance ruling from the Secretary as to the eligibility of their children. As a consequence land will pass out of trust. Indian parents, in doubt as to whether their property would go to their children or to the tribe, justifiably would seek fee patents to be sure that title passed to their children or other heirs. Thus, Title II, intended to aid tribes in retaining land in trust, creates incentive for moving land out of trust.

The Title II definition of an "Indian" is subject to challenge for vagueness. The statutory definition supplies no standards. The definition should be modified to read:

"Indian" means any person of Indian blood:

(a) Who is a member of a tribe; or

(b) Whom the Secretary determines is recognized as an Indian in the community in which the person lives; or

(c) Who has received or is eligible to receive any services from the Bureau of Indian Affairs or the Indian Health Service; or

(d) For whom the United States has held, or holds, trust or restricted property; or

(e) Who is recognized as an Indian by the governing body of the tribe where that person's land is located.

CONCLUSION

Title II deals with land—the most important and most valuable resource possessed by tribes and Indians. Title II also deals with the law of inheritance, which in turn controls the right to property. The interests of thousands of Indians and vast acreages are affected. To the extent possible the law should avoid ambiguities or inconsistencies that will surely give rise to disputes and litigation. Title II deserves careful review and should reflect the views of the tribes and Indian people affected by its provisions. The Committee reports should make plain the legislative intent.

SUGGESTED REDRAFT OF TITLE II ACCOMPANYING STATEMENT OF MARVIN J. SONOSKY

TITLE II

SEC. 201. This title may be cited as the "Indian Land Consolidation Act".

SEC. 202. For the purpose of this title—

(1) "Secretary" means the Secretary of the Interior;

(2) "trust or restricted land" means land, title to which is held by the United States in trust for an Indian or an Indian tribe, or land, title to which is held by an Indian or an Indian tribe subject to a restriction by the United States against alienation;

(3) "tribe" means any Indian tribe, band, group, pueblo, or community that owns, or whose members own, trust or restricted land;

(4) "Indian" means any person of Indian blood (a) who is a member of a tribe, or (b) whom the Secretary of the Interior determines is recognized as an Indian in the community in which he resides; or (c) who has received, or is eligible to receive, any services from the Bureau of Indian Affairs or Indian Health Service; or (d) for whom the United States has held, or holds, trust or restricted property; or (e) who is recognized as an Indian by the governing body of the tribe where that person's land is located;

(5) "Isolated tract" means a tract of tribal land wholly surrounded by fee land.

SEC. 203. The provisions of section 5 of the Act of June 18, 1934 (48 Stat. 985), shall apply to all tribes notwithstanding the provisions of section 18 of such Act: *Provided*, That nothing in this section is intended to supersede any other provision of Federal law which authorizes, prohibits, or restricts the acquisition of land for Indians with respect to any specific tribe, reservation, or state.

SEC. 204. (a) For the purpose of eliminating undivided fractional interests in individual Indian trust or restricted land or consolidating tribal landholdings, and notwithstanding any other provision of law, any tribe, acting through its governing body, is authorized with the approval of the Secretary, to adopt a land consolidation plan providing for the sale or exchange of any isolated tract of tribal land or tribal interest in such land, reserving to the tribe all minerals in such isolated tract: *Provided*, That—

(1) the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 per centum of the fair market value as determined by the Secretary;

(2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;

(3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land within the approved consolidation area;

(4) the Secretary shall maintain a separate interest-bearing trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying land under this section.

SEC. 205. In addition to the authority vested in the Secretary or a tribe under existing law to acquire undivided interests in trust or restricted land, any tribe, with the approval of the Secretary, may purchase, at no less than the fair market value, part or all of the nonmineral interests in any tract of trust or restricted land within that tribe's reservation, or otherwise subject to that tribe's jurisdiction, with the consent of the owners of over 50 per centum of the undivided interests in such tract: *Provided*, That any Indian owner of an undivided interest in such a tract, who continuously used and occupied such tract as the Indian's home for a period of not less than five years immediately prior to the tribe's offer to purchase, may with the Secretary's approval, purchase such tract by matching the tribal offer.

SEC. 206. Notwithstanding any other provisions of law, any tribe may provide by ordinance adopted by its governing body, subject to approval by the Secretary, that nonIndians, and at the option of the tribe, Indian nonmembers of the tribe, shall not be entitled to receive by devise or descent any interest in trust or restricted lands within that tribe's reservation or otherwise subject to that tribe's jurisdiction: *Provided*, That any such approved ordinance shall apply

only to estates of decedents whose deaths occur on or after the date the tribal ordinance is adopted pursuant to this section; and *Provided Further*, That—

(1) the surviving ineligible spouse of an Indian who dies intestate shall receive a life estate in as much of the trust or restricted lands as such surviving spouse would otherwise have inherited. The remainder interest in as much of the trust or restricted land as the ineligible spouse would otherwise have inherited shall vest in the heirs eligible to inherit under the approved tribal ordinance, in the respective proportions of their inheritance;

(2) if an intestate Indian decedent has no heir to whom interests in trust or restricted lands may pass, such interests shall escheat to the tribe subject to the rights of any surviving spouse ineligible to inherit under the ordinance as described in paragraph (1) of this section;

(3) if an Indian decedent has devised interests in trust or restricted lands to persons ineligible to inherit under a tribal ordinance adopted pursuant to this section, the devise shall be void only if, while the estate is pending before the Secretary for probate, the tribe acquires such interests by paying to the Secretary, on behalf of the devisees, the fair market value of such interests as determined by the Secretary as of the date of the decedent's death: *Provided*, That any surviving ineligible spouse of such decedent who has been devised such interests may at the option of such surviving spouse reserve from purchase by the tribe a life estate in such interests, or accept compensation from the tribe for the value of the life estate in such interests.

SEC. 207. No undivided fractional nonmineral interest in any tract of trust or restricted land within a tribe's reservation, or otherwise subject to a tribe's jurisdiction, shall descend by intestacy or devise, but shall escheat to that tribe if the Secretary determines that such interest is not capable of producing income of more than $100 per year.

SEC. 208. The Secretary in carrying out his responsibility to regulate the descent and distribution of trust lands under section 1 of the Act of June 25, 1910 (36 Stat. 855; 25 U.S.C. 372) as amended, and other laws, shall give full faith and credit to any approved tribal ordinance adopted pursuant to section 206 of this title.

SEC. 209. All sales and exchanges of trust or restricted land under authority of this title, shall be subject to approval by the Secretary. The Secretary shall issue deeds, patents, or such other instruments of conveyance as may be required to effectuate a sale or exchange of tribal or individual lands made pursuant to the terms of this title and may, at the request of an Indian owner, remove the trust status of individually held lands or interests therein in accordance with law.

SEC. 210. Title to any land acquired under this title by any Indian or Indian tribe shall be taken in trust by the United States for that Indian or Indian tribe.

SEC. 211. All lands or interests in land acquired by the United States for an Indian or Indian tribe under authority of this title shall be exempt from Federal, State and local taxation.

Mr. ALEXANDER. Because of some time constraints, I would like to ask Mr. Gerald Anton if he would like to present his testimony at this time, and then we will go back around the table.

STATEMENT OF GERALD ANTON, PRESIDENT, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, SACATON, ARIZ.

Mr. ANTON. Mr. Chairman, members of the committee, I am Gerald Anton, president of the Salt River Pima-Maricopa Indian Community. I welcome this opportunity to testify before this committee concerning the issues which are addressed in House Joint Resolution 158, as well as those issues which are not addressed but which result from the passage of Public Law 97-485 and about which the Salt River Pima-Maricopa Indian Community has great concern.

During the year 1981, the Salt River Pima-Maricopa Indian Community conducted a study of the effect of fractionation of allotted land interests within the community's reservation. As a result of that

study, the community council authorized the drafting of legislation which was submitted to members of the Arizona congressional delegation for their consideration.

On May 20, 1982, the president of the Salt River Pima-Maricopa Indian Community testified in regard to H.R. 5856 before the Committee on Interior and Insular Affairs of the House of Representatives. Then, on June 4, 1982, the Salt River Community's attorney responded to Chairman Udall's request that he review the Bureau of Indian Affairs' proposed substitute bill.

On January 12, 1983, Public Law 97–459 was enacted, and the Salt River Pima-Maricopa Indian Community Council proceeded to review the legislation and authorized its attorneys to prepare a memorandum to the Arizona congressional delegation in regard to its principal concern with the Indian Land Consolidation Act. That concern is directed at 25 U.S.C. 2205, which appears as section 206 of title II of Public Law 97–459.

It should be first noted that the analogous section in H.R. 5856 did not restrict the tribe's power to limit inheritance to land owned by a member of the tribe, but used as its measure land under the jurisdiction of the tribe. Public Law 97–459 allows a tribe to restrict inheritance only in cases where the land over which the tribe has jurisdiction is owned by a member of the tribe.

It is not uncommon for members of one Indian tribe or community to own allotted land on the reservation of another Indian tribe or community. Section 206, as it is written, would allow an Indian tribe or community to enact laws which would restrict inheritance of interests in allotted land only as to its own member's interest in land within its reservation. Thus, a member of the Gila River Indian Community who owns allotted land in the Salt River Pima-Maricopa Indian Community will not be restricted in devising his interest in allotted land on the Salt River Indian Reservation to non-Indians even though the Salt River Indian Community enacts an ordinance restricting the devise of land to non-Indian within the Salt River Indian Community.

The situation between the Gila River Indian Community and the Salt River Pima-Maricopa Indian Community is not unique. There are similar landholding situations in Montana and perhaps in other places in Indian country. Indeed, in 1980, the Congress enacted an amendment to 25 U.S.C. 464 which cured a problem similar to the one created by section 206 of Public Law 97–459.

We have submitted to this committee four possible amendments which would satisfy the needs of the Salt River Pima-Maricopa Indian Community. The first would simply strike out the requirement that the land be owned by a member of the tribe.

It may be that while this would be helpful to the Salt River Pima-Maricopa Indian Community in Arizona, it may not be beneficial to other tribal communities in other parts of the country, and perhaps there ought to be a distinction made between nonmembers of a tribe and non-Indians in regard to their right to take by devise or descent. Such a distinction would not adversely affect the Salt River Pima-Maricopa Indian Community in regard to the problem that we have discussed today.

So, the second suggested amendment would allow a tribe to restrict inheritance by a non-Indian of any such land under the tribe's jurisdiction while providing that inheritance to a nonmember who does not have significant and longstanding connection with the tribe's reservation may be restricted by the tribe.

Third, the section may be amended to restrict the tribe from prohibiting inheritance by lineal descendants of nonmembers but otherwise allow the restriction of devise and descent.

Perhaps a solution which has the least adverse impact in Indian country is encompassed in our suggested amendment No. 4. It would enable tribes to restrict inheritance by non-Indians. It would not deal with the question of nonmembers and would affect all of the trust or restricted land on a tribe's reservation without regard to its ownership.

Any of these suggested amendments would solve the problem that the Salt River Pima-Maricopa Indian Community Council has addressed. We would ask this committee to seriously consider our suggestion and to amend House Joint Resolution 158 appropriately.

Now there are four objections there.

Mr. ALEXANDER. Let me assure you that the staff of the committee will be considering all of the recommendations for change in this bill that are presented to us, and that we expect that when the committee goes to markup and we make a staff recommendation it will include some amendments. We will take all the suggestions quite seriously.

Thank you for your time.

The attachment to your statement will be made a part of the record at this point.

[The attachment follows:]

TEXT OF ENABLING PROVISIONS ALLOWING THE RESTRICTION OF DEVISE OR DESCENT

(a) H.R. 5858, TITLE II, SEC. 201

"Any Indian tribe may provide, by appropriate action of its governing body, that only the tribe and either its tribal members or Indians shall be entitled to receive by devise or descent any interest in trust or restricted land within that tribe's reservation or otherwise subject to that tribe: . . .".

(b) P.L. 97-459, TITLE II, SEC. 206

"Notwithstanding any other provision of law, any Indian tribe may provide by appropriate action of its governing body, subject to approval by the Secretary, that non-members of the tribe or non-Indians shall not be entitled to receive by devise or descent any interest of a member of such tribe in trust or restricted lands within that tribe's reservation or otherwise subjected to that tribe's jurisdiction: . . .".

(c) SUGGESTED AMENDMENTS TO P.L. 97-459, TITLE II, SEC. 206

(1) "Notwithstanding any other provision of law, any Indian tribe may provide by appropriate action of its governing body, subject to approval by the Secretary, that non-members of the tribe or non-Indians shall not be entitled to receive by devise or descent any interest in trust or restricted lands within that tribe's reservation or otherwise subjected to that tribe's jurisdiction: . . .".

(2) "Notwithstanding any other provisions of law, any Indian tribe may provide by appropriate action of its governing body, subject to approval by the Secretary, that [non-members] *any Indian who is not a member* of the tribe *and has not been an actual resident of the tribe's reservation for a period of at least*

10 of the last 15 years or the last 2/3 of such person's life, whichever is less, prior to the descent or devise of the interest, or non-Indians shall not be entitled to receive by devise or descent any interest [of a member of such tribe] in trust or restricted lands within that tribe's reservation or otherwise subjected to that tribe's jurisdiction: . . .".

(3) "Notwithstanding any other provision of law, any Indian tribe may provide by appropriate action of its governing body, subject to approval by the Secretary, that [non-members] *Indians who are not members* of the tribe and *who are not lineal descendants of the decedent* or non-Indians shall not be entitled to receive by devise or descent any interest [of a member of such tribe] in trust or restricted lands within that tribe's reservation or otherwise subjected to that tribe's jurisdiction: . . .".

(4) "Notwithstanding any other provision of law, any Indian tribe may provide by appropriate action of its governing body, subject to approval by the Secretary, that non-Indians shall not be entitled to receive by devise or descent any interest in trust or restricted lands within that tribe's reservation or otherwise subjected to that tribe's jurisdiction: . . .".

Mr. ALEXANDER. I would like to go to Norman Hollow at this time, who is from Fort Peck, Mont.

STATEMENT OF NORMAN HOLLOW, CHAIRMAN, ASSINIBOINE AND SIOUX TRIBES, FORT PECK, MONT.

Mr. HOLLOW. Thank you. I am grateful to the committee for providing this hearing so that tribes can express their views concerning title II.

One of the matters that we are very concerned with is the manner in which this particular issue was handled during the last session of Congress: The matter of not being granted the opportunity to express our views at a hearing.

It was stated earlier by the Department that one of the reasons they supported this type of legislation is the matter of resolving fractionated heirship interest.

I might say, in regard to this, that originally, had it not been for the General Allotment Act, the enactment of this act, we would not be faced with the complicated heirship. Had the reservation been left intact as tribally owned land, as many of the Indian tribes had wanted it, we would not be faced with this problem.

In lieu of that, I think that every effort should be made by Congress to assist the tribes in their desire to keep their land intact and to protect the allotees as much as possible. One of the ways of doing so is providing finances to the tribes for some of these so-called complicated heirships to be purchased by the tribes.

We have purchased numerous acreages of heirship tracts by loans that we have received from Farmers Home Administration. Quite often, funding from Farmers Home is limited, and, also, it is getting to the point where the interest rate is getting quite excessive.

Therefore, what I would like to see is a low rate of interest funding made available to the tribes to take care of this matter of complicated heirship tracts. I think this is one way that the tribes themselves could take care of the matter, if low interest funds are made available to them.

The Department witnesses made quite an issue of small tracts that are difficult to administer. However small those tracts are, I think we ought to realize that they are valuable tracts of land. Perhaps there

are 30 heirs out of a 320-acre allotment, which amounts to over 10 acres to each individual. In many cases those 10 acres consist of valuable acreage consisting of timberland, and in our case at the Fort Peck Reservation we have valuable coal, valuable oil and gas rights, underlying those tracts of land. These are things that should be taken into consideration.

It was also mentioned that the reaction of the Indian people was not that great with reference to this legislation. I do not know how the other Indian people on other reservations react, but if the committee, the Bureau, or the Secretary of the Interior wishes to find out how my reservation is reacting, I invite them to come to Fort Peck Reservation, and they will get firsthand information on how my Indian people feel with reference to this particular piece of legislation. They are very much upset by the fact that they have not been granted the opportunity to present their views on a very important issue in relation to fractionated interest.

The mere fact that legislation of enormous importance has been passed by Congress without granting us the right to testify at hearings is something that upsets them very much.

I would recommend to this committee that section 2 of the act be repealed and that a series of field hearings be conducted to grant the opportunity for reservation people to appear and express their concern and express their views.

Mr. ALEXANDER. Thank you for your suggestion. We hope that at least this hearing today takes into account those concerns.

Mr. HOLLOW. Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF NORMAN HOLLOW, CHAIRMAN, ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION IN MONTANA

Mr. Chairman and members of the Committee, my name is Norman Hollow. I am the Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Montana.

I am grateful to the Committee for providing this hearing so that tribes and the people of the tribes can have a chance to inform the Committee of their views on Title II that was hooked up to the special Devils Lake bill in the last Congress.

Title II deals with fractionated heirship holdings of trust land and with the rights of tens of thousands of Indians to pass and receive trust land by inheritance. Title II touches just about every Indian man, woman and child in the country and affects property worth untold millions.

We know that in the last Congress a separate bill covering Title II was adopted by the House. We also know that this Committee had not scheduled any hearings on the House bill and that no hearings were scheduled because it was so late in the Congress.

The next thing we knew the House bill was made into law without any hearings on the Senate side. This worried us very much. In all my years as Chairman this is the first time that I can recall where tribes were not given an opportunity to present their views on important general legislation that affected all tribes and Indians. Title II deals with matters that deserve input from the tribes and their people. I have given this much thought and I believe that Title II should be repealed and extensive hearings should be held in the field, where the Committee can become acquainted with all sides of the problem.

There should be an opportunity for explanation and discussion in the Indian press and on the reservations. I see no emergency or need for haste. The Bureau has let the fractionated interests problem fester for at least 40 years and so far as I know there is no great demand for the heirship portion of Title II except perhaps on a reservation by reservation basis. Title II is not the sort of legislation

that should be suddenly imposed on Indian people without hearings and without giving weight to their views.

If Title II is not repealed, it should be modified along the lines of the redraft submitted by Mr. Sonosky. I do not propose to cover any technical points, but there are several items that a fair law governing all tribes should provide. I should like to say a few words with respect to each of these items.

1. The sale or exchange of tribal land. The life of an Indian tribe depends on its land base. Without a land base there is little to hold a tribe together. Every Indian tribe can look back at the shrinkage of its holdings. The most recent episode took place not so long ago. In the 1950's the Bureau was pursuing a policy of supervised sales. By the time the Bureau was stopped, we had very little trust land left at Fort Peck. The Bureau sold a vast acreage for depressed prices in a depressed market it created by dumping all the trust land it could on small rural markets at one time. Along with the land the Bureau threw in highly valuable oil and gas and other mineral rights for free.

Ever since that time my Tribes have struggled to rebuild our land base. Each year we set aside large sums to purchase land. We have borrowed $5 million from the Farmers Home Administration for the purchase of land.

We do not want a law, such as Title II, that opens the door for a tribe to sell or exchange "any tribal lands or interests in lands." We know about the requirement for Secretarial approval but experience tells us that this is not a strong enough safeguard to withstand the powerful interests that soon would start the machinery to separate the tribes from their choice land and from their minerals.

Title II authority to sell or exchange tribal land should be limited to the nonmineral interests in isolated tracts. Isolated tracts should be defined to mean tribal land entirely surrounded by fee land.

2. The purchase of heirship interests. Title II would let the individual heir's minerals go with the surface. This is wrong. My whole reservation is regarded as potential oil and gas country. Today, there are oil wells pumping 50 and 100 barrels of oil a day on fee land that the Bureau sold at supervised sale for the appraised value of the surface. The Bureau deliberately, as a matter of policy, gave the mineral rights to the purchaser because it did not want to be bothered with carrying the mineral interests on its books. My Tribes don't want to take valuable minerals from our own Indian people and Congress should not require it. The law should confine the tribes' right to purchase fractional interests to surface rights. The mineral interests should stay in the heirs.

From time to time individual Indians offer to sell their fractional interests to the Tribes. All the interests simply are seldom available for sale. The best time to buy fractional interests is when there are relatively few heirs, say six or less. Title II doesn't help until there are at least 15 heirs. It seems to me that if the purpose of Title II is to cut off fractional interests, the earlier those interests are picked up by the tribe the better. Otherwise, the heirs die, the interests become more numerous and more highly fractionated.

Another thing that bothers me is that under Title II a majority of the heirs can authorize the sale of the land. In my opinion the Secretary should have the power to approve sales of fractional interests only if the majority of the ownership interests consent, regardless of the number of heirs. The number of heirs has nothing to do with the question. What counts is the ownership of the land. If I and my four brothers and sisters own a 75 percent interest in a trust allotment, along with 25 cousins who each own 1 percent, I don't think a majority vote of my 25 cousins should control whether we have to sell our 75 percent.

In summary, individual heirs should be permitted to retain their mineral interests when they will their fractional interests to the tribe, and the Secretary should have power to approve a sale only with the consent of a majority of the ownership interests regardless of the number of heirs.

3. Heirship provisions and the definition of an Indian. To cut people off from their inheritance is a pretty extreme action. Tribes have varying views and I can appreciate the difficulty of trying to draft legislation that relates to all tribes, particularly, since each tribe has a different situation and the tribes have not been heard by the Committee.

I know that my Council never will adopt an ordinance that takes away the inheritance rights of heirs of members, but not the inheritance rights of heirs of nonmember Indians owning trust interests on the reservation. My Council will not subject the interests of members to escheat and at the same time leave non-

member Indians free from escheat. If there is to be a law such as Title II, then nonmembers' trust lands must be covered by the tribal ordinance.

As I understand the escheat provisions, if an Indian dies without a will and leaves no eligible heirs under the tribal ordinance, the property escheats to the tribe. But, if an Indian dies with a will under which he passes property to ineligible heirs, there is no escheat to the tribe. The ineligible heirs under the will keep the trust land unless the tribe buys their interests. In addition, a separate section of Title II requires escheat to the tribe of any interest, whether or not there is a will, regardless of whether the heirs are eligible or ineligible to take the property, and regardless of whether the property has potential mineral or timber value, so long as the fractional interest of each heir amounts to at least two acres and has earned less than $100 for its owner in the preceding year.

There are several things about this escheat provision that confuse me. If an Indian dies without a will, Title II says that the interests of ineligible heirs escheat to the tribe. Why shouldn't the interests of ineligible heirs under a will escheat to the tribe? Why is the tribe required to buy out the interests of ineligible heirs under a will and not the interests of ineligible heirs where there is no will?

Also, I notice that the 2-acre-$100-income escheat provision in Section 207 provides for escheat both where there is a will and where there is no will, regardless of the eligibility of the heirs. If Title II is to be law, the 2-acre-$100-income escheat section should be changed as suggested in Mr. Sonosky's redraft.

4. Definition of an Indian. The word "Indian" is used many times in Title II. The Title II definition takes care of Indians who are members of any tribe. But the definition is far too narrow to take care of the Indians who are not members of a tribe. We don't like a definition that says a person is an Indian if the Secretary recognizes him as an Indian. This leaves the Secretary free to do just about what he wants to do. We have Indians on our reservation who are the children and grandchildren of members but who are not enrolled. In some tribes applications for enrollment must be filed within two years after birth. If no application is filed on time the Indian is not enrolled. Some tribes do not enroll children born out of wedlock. Other tribes use only one-half the blood of the mother to measure eligibility of illegitimates which leaves the child ineligible for membership even though the father may have been a fullblood. No one knows who is an Indian better than the people of the reservation. If a person is subjected to the discrimination and abuses that come to an Indian because of his race, it is because that person is recognized as an Indian and is known to be an Indian in the community where he lives. That in my mind is the real test.

If the United States has held or is holding property for a person in trust, or is furnishing Bureau or Indian Health Service to that person, the Government recognizes that individual as an Indian. The governing bodies of Indian tribes are made up of representatives of the people. They know every family and every Indian on the reservation. If the tribal council recognizes a person as an Indian, you can be sure that person is an Indian. These tests should be part of the definition of an Indian.

I urge the Committee to call on the Senate to repeal Title II. Failing in that nothing should be done on H.J. Res. 158 until full hearings have been held.

Mr. ALEXANDER. Going through the list of witnesses on the second panel on this bill, I notice that the only one still sitting in the audience is Suzanne Harjo, if she would like to join us at the table.

Paul Iron Cloud from Pine Ridge, S. Dak., is our next witness.

STATEMENT OF PAUL IRON CLOUD, COUNCILMAN AND CHAIRMAN OF THE LAND COMMITTEE, OGLALA SIOUX INDIAN TRIBE, PINE RIDGE, S. DAK., ACCOMPANIED BY CAROL BARBERO, ATTORNEY, AND JOE AMERICAN HORSE, CHAIRMAN, OGLALA SIOUX TRIBE

Mr. IRON CLOUD. Thank you, Mr. Chairman.

I think you probably have already met the people I am sitting with: our attorney, Carol Barbero, and Joe American Horse, chairman of the Oglala Sioux Tribe.

I feel the same as the chairman from Fort Peck. There is a lot of concern within our reservation. We are supposed to be the second largest reservation in the United States, and the pressure that the tribe is taking right now, it is hard to say how much pressure we are taking. They are having a series of meetings on the reservation right now. Different groups are getting together and saying that the tribe did not do anything about this bill. I do not think we had any input whatsoever into this bill.

I have a paper here I would like to read to you, so that the other delegation can rely on it.

The Oglala Sioux Tribe opposes section 207 of the Indian Land Consolidation Act. This provision of the act vitally affects many members of our tribe who own small quantities of trust land on our reservation. Generally, these people are among the poorest members of our tribe.

Section 207 deprives these individuals of their property rights to leave their property to their heirs. It transfers ownership to the tribe from any deceased individual owner whose undivided interest is less than 2 percent of the total and has produced income less than $100 in the preceding year. The act does not require the payment of compensation to the heirs of the owner.

Our land committee was not made aware of this proposal until after it became law. Such a major change affecting our people's land should have been reviewed carefully by our land committee. We have now given careful consideration to the provisions of the act, especially section 207, and we strongly object to its application on our reservation.

The Constitution of the United States provides in the fifth amendment, "* * * nor shall private property be taken for public use, without just compensation."

On the Pine Ridge Reservation we understand that the protections of the Federal Constitution apply to the rich man and the poor man alike, that the requirement to pay just compensation when property is taken applies to the widow's mite, as well as to the stockholdings of the wealthy.

We do not need lawyers to tell us that section 207, as it now reads, plainly violates the fifth amendment of the Federal Constitution.

We do not believe that our poorer people on the Pine Ridge Reservation should be forced to hire lawyers and go to the Supreme Court to obtain this constitutional protection. Congress should not pass unconstitutional laws in the first place.

Consequently, we urge you to delete section 207 from the act. If other tribes want this section to apply on their reservations, we would accept an amendment adding at the end of section 207: "provided, however, that this section shall not apply to the Pine Ridge Indian Reservation."

Mr. Chairman, I am testifying on behalf of the only beneficiary of section 207 on the Pine Ridge Reservation, the Oglala Sioux Tribe. We do not want what it gives us. We, as a tribe, do not want to take over people's land without compensation.

Mr. Chairman, already there are 52 probate cases on the Pine Ridge Reservation that are affected by section 207 of the act. If the law is applied as currently written, the heirs of these 52 deceased Indians will be automatically divested of the property interest they would have otherwise inherited. Those property interests will go to the Oglala Sioux Tribe under this law, but the tribe will not pay any compensation

to these heirs. As a consequence, the tribe may well find itself as a defendant in lawsuits brought by these heirs.

The tribe did not seek the enactment of section 207. It does not want to acquire property interest in the manner provided by section 207, and the tribe does not want to have to defend the application of section 207 to estates of its deceased members. It is imperative that Congress now act quickly to either repeal section 207 or make it inapplicable on the Pine Ridge Reservation.

In addition, as presently worded, the act could be interpreted to override tribal constitutional provisions and to confer on tribal governments authorities which are expressly withheld by constitutions duly adopted pursuant to Federal law.

Our tribe is organized under 25 U.S.C. 476, which recognizes the right of the people of the reservation to amend the tribal constitution. We request that clarifying language be added to the act to make clear that Congress does not intend to usurp the authority of reservation Indians to establish their own respective constitutional governments and to decide what powers shall be vested in tribal councils and what powers shall be retained by the people.

We propose the following new section 212:

SEC. 212. Notwithstanding any other provision of this act, any authority conferred thereby on an Indian tribe shall be subject to the applicable provisions of the tribal constitution and shall be exercised only in accordance therewith.

There are some good provisions in this bill. It will assist us in consolidating tribal landholdings on our reservation. If the Congress will make the changes we are requesting, we expect that our people will accept the act, and we may well take advantage of its provisions. We support the clarifying amendments proposed in House Joint Resolution 158.

Mr. Chairman, we appreciate the opportunity of presenting the views of the Oglala Sioux Tribe on this important matter. I should add that great public interest has been aroused on our reservation by this act. Mass meetings have been held. The amendments which we are proposing will do much to restore calm and confidence that the United States has no intention of illegally depriving our poorer tribal members of the small landholdings which they retain.

Mr. ALEXANDER. Either you or your attorney can comment on this question. When Mr. Nordwall was up here testifying previously, he was asked, as was Mr. Fritz, about their view as to whether or not section 207 was constitutional. They gave an explanation as to why they believed it to be constitutional. Does that explanation carry any weight with either of the two of you?

Ms. BARBERO. Sir, I would be interested in seeing a written submission from Mr. Nordwall on that. I have no opinion at this point. I cannot say that I am terribly hopeful, however.

Mr. TAYLOR. Mr. Iron Cloud, I have a question. On section 207, the escheat provision, if there were an amendment that made this permissive for the tribe to adopt or seek waiver of that provision, would that go a considerable distance toward resolving the problem out there at Pine Ridge?

Mr. IRON CLOUD. Do you mean not putting Pine Ridge Reservation under 207? Is that what you are saying?

Mr. TAYLOR. The tribal council could adopt a resolution opting out of it, or perhaps placing restrictions on when it would be triggered. For example, the tribe itself would authorize some sort of a payment for the interest that is being escheated; authority for the tribe to adopt such an ordinance.

Mr. IRON CLOUD. I would have to take that back to the council to review.

Mr. ALEXANDER. We are going to move on because we have five more people who wish to testify on this.

The next person on my list is Suzanne Harjo, who is testifying today for the Cheyenne River Sioux and the Nez Perce Indian Tribes.

STATEMENT OF SUZANNE HARJO, FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN LAW OFFICES, WASHINGTON, D.C., REPRESENTING THE CHEYENNE RIVER SIOUX AND THE NEZ PERCE INDIAN TRIBES

Ms. HARJO. Chairman Morgan Garreau of Cheyenne River and the Nez Perce chairman, Allen Pinkham, in the interest of consolidating energy and resources, have asked me to present this testimony for them and to say to you that they consider it a minor miracle that this legislation even got through the lameduck session, and to commend both staff and members for valiant efforts to address this complex, debilitating, and costly problem.

We have reviewed the material, provided throughout Indian country by Mr. Sonosky, and find it most compelling and wish to echo some of his concerns. You have our written statement which, I presume, will be made part of the record. I would just like to talk about some of the points where we differ.

We would like to see the provision calling for consent to sale by over 50 percent of the interest ownership rather than 50 percent of the owners. That would also obviate the need for the veto power of the three or fewer owners of the 50 percent or more of the interest.

We would like inclusion of a provision that would give to the tribe the first right of refusal to purchase, and that, pursuant to a tribal resolution declining to purchase, the tribal members could apply for—would be prohibited if they acquire lands from applying for a fee patent on such lands for 10 years from the date of purchase. This, of course, would reinstate the 10-year moratorium that was suggested by the House and was taken out by the Senate.

Our third point is that we would like the tribes to be able to develop a land consolidation plan that allows for tribal discretion to tailor inheritance provisions to its unique problems and traditions.

We would like, in point 4, to have the inheritance section restrictions applied, as Mr. Sonosky has so well made the point in his memorandum, to nonmember Indians as well as tribal members, so that these restrictions would apply to individual trust lands. In conversation with the Salt River delegate attorney and chairman, this would resolve their problem as well, they feel.

We would like, in point 5 here, for the Secretary to conduct a complete inventory of the minerals in the tracts proposed for sale, and to provide that inventory and a certification of value to the tribe and to

the interest owners. We do feel that the tribes should have the authority to sell the mineral interests along with the lands where there is sufficient information for there to be an informed decision. We assume that this was in Congress mind inasmuch as there is informed judgment language and secretarial notification of value language in the House report.

We would like to avoid a situation about which we all have historic inhibition, where much valuable property was lost because of obscured or unavailable or altered valuations on the part of the Federal Government and inaccurate or insufficient data given to tribes. Therefore, if there is no mineral value, if the minerals do not add to the value of the land, then there is no loss in prohibiting their transfer. This way, the tribe's future options in the event of new discoveries or inadequate valuations of minerals that are unable to be fully mined now or sold now would be preserved, and there will be sort of a no-fault clause. We think this would not be a problem.

We think to restrict totally the tribe's ability to perhaps make money off isolated small mineral sales is a bit too paternalistic and would not favor that, but would favor a prohibition on the transfer where it is determined that they do not add to the value of the land.

The trustee, the United States, should be performing those inventories, anyway. As I have said to this committee on numerous occasions, in relation to the 2,415 claims, the trustee, the United States, does not know what is out there and should, and may be requiring the Interior Secretary to conduct an inventory of the minerals, which in this instance will be a foot in the door to actually finding out what is in the Indian trust estate.

The very last point I would like to make is this, and I hope I am not a voice in the wilderness here. We would like some demonstration of seriousness about the tribe's facilitation of consolidation under this act, and that demonstration from the richer part of Government would be funding. We would like funds authorized under this act for the Federal Government to carry out the purposes of the act. This would be a savings to the Federal Government, and it would speed up this process with the short-term investment and would eliminate some long-term bureaucratic costs associated with maintaining those records.

I said that was my final point. I do have another final point, though. My final point part (b). What my friend, Mr. Fritz, described as the slow crawl pace of the BIA process really works in our favor here. So far, only area office personnel have been privileged to have training in this act in Albuquerque. Two areas, if I am not mistaken, Aberdeen and Billings, were prohibited from attending because of budgetary constraints, and no agency level people have yet been trained in this act. Some realty people in the Aberdeen area are beginning to be trained this week in the act.

While the BIA has not geared up to address the problems and the opportunities in this act, it would be a good idea to move some of these amendments expeditiously before they get too set in their ways.

Thank you very much.

Mr. ALEXANDER. Thank you. Let me assure you that your full statement will appear in the record.

I would like a clarification on your first final point. Do you have a particular level of authorization in mind?

Ms. HARJO. As much as is possible.

Mr. ALEXANDER. We are in the Budget Committee room, so we do know the constraints there.

Ms. HARJO. That is what made me have mercenary thoughts.

Mr. ALEXANDER. I see. Thank you.

[The prepared statement follows:]

PREPARED STATEMENT OF SUZAN SHOWN HARJO, LEGISLATIVE LIAISON, FRIED, FRANK, HARRIS, SHRIVER & KAMPELMAN, ON BEHALF OF THE CHEYENNE RIVER SIOUX TRIBE AND THE NEZ PERCE TRIBE

We wish to commend the Committee for its sponsorship in the 97th Congress of the Indian Land Consolidation Act, and for its continuing efforts to provide Indian governments with the tools to deal with the complicated, costly and debilitating fractionated heirship problem. In order to further the purposes of the Indian Land Consolidation Act and our beneficial use of it, we urge the Committee to broaden the technical corrections contained in H.J. Res. 158 and to amend P.L. 97–459 in accordance with the following suggestions.

1. Provide that the tribe shall have the unrestricted right to purchase all fractional interests if over 50% of the interest ownership agrees to sell. This provision, now contained in the Act, would eliminate the element and appearance of unfairness in the current provision allowing for purchase if 50% of the owners, who may own considerably less than 50% of the land, consent to the sale. This provision would also obviate the need for the veto power of the three or fewer owners of 50% or more of the interest.

2. Provide that the tribe shall have the first right of refusal to purchase fractional interests and that tribal members who purchase tracts following tribal declination, and pursuant to tribal resolution, shall be prohibited from applying for a fee patent in such lands for ten years from the date of purchase. This would eliminate the current provisions allowing "any Indian owning any undivided interest in, and in actual use and possession of such tract" to purchase the land "by matching the tribal offer." This would also reinstate the ten-year moratorium contained in the House version, which was deleted on the Senate floor without a hearing. Since tribal, not individual, consolidation is the purpose of the Act, we feel that tribes, not individuals, should have the first option to purchase, followed by individual tribal members. Should the tribe decline the opportunity to exercise its option to purchase, the Act should recognize its authority to receive and make determinations regarding individual bids. We urge the reinstatement of the ten-year moratorium because it is desirable to avoid the situation where an individual can purchase land, convert it to fee patent status and sell it out of the trust estate, which is permitted under the Act today. Reinstatement of the moratorium would bring the provisions of the Act in line with its stated intent.

3. Provide that the tribe may develop a land consolidation plan that allows for tribal discretion to tailor the inheritance provisions to its unique traditions and problems. We feel that it is important for the Act to recognize that tribes differ from each other in their approach to the recognition of heirs and their rights and to provide the flexibility for tribes to accommodate those differences.

4. Provide that non-member Indians, as well as tribal members, are subject to the inheritance section of the Act, which now restricts tribal members from conveying land to nonmember heirs, but non-member Indians are not similarly restricted. We feel that this restriction should apply to all individual trust lands owned by Indians, irrespective of their status as tribal members.

5. Provide that the Secretary must conduct a complete inventory of the minerals contained in the tracts proposed for sale and that the inventory and certification of value shall be made available to the tribe and to the interest owners. This is in line with the House Interior Committee's expectation that the Interior Department would "notify the tribe's of the mineral value and potential value of all lands proposed for an exchange or sale by the tribes so that they can make an informed judgment in deciding whether to retain or sell such mineral interests." (House Report No. 97–908, page 8.) We feel that the tribes should have the authority to sell mineral interests along with lands, where there is sufficient data for the tribes to determine whether or not the sale is in their best interest. However, to avoid the situation that has occurred in the recent past where Indians have lost valuable mineral property because of inadequate or obscured data re-

garding their value and existence, we urge the Committee to prohibit sale of the mineral estate where it has been certified that the minerals do not contribute to the value of the land. In this way, the tribes' future options, in the event of new discoveries or inadequate valuations, will be preserved.

Finally, we urge the Committee to authorize the expenditure of federal funds to carry out the purposes of the Act. A short-term investment of funds to tribes to facilitate consolidation would reduce long-term expenditures associated with administration, record keeping and other expenses incurred by the federal government in maintaining the existing heirship system.

Mr. ALEXANDER. We would like to hear from Wayne Felter and Joe Smith from the Northern Arapahoe Tribe, Wind River Reservation.

STATEMENT OF WAYNE FELTER, CHAIRMAN, NORTHERN ARAPAHOE TRIBE, WIND RIVER RESERVATION, WYO., ACCOMPANIED BY JOE SMITH, VICE CHAIRMAN

Mr. FELTER. Thank you, Mr. Chairman.

I am Wayne Felter, the chairman of the Northern Arapahoe in Wyoming. Mr. Joe Smith here is vice chairman.

We have a written statement, but I do not think I will present it at this time.

Mr. ALEXANDER. That will appear in the record as if given.

Mr. FELTER. I agree with all the witnesses that have testified so far on House Joint Resolution 158, in that there was no tribal input. For the Arapahoes, we got it at the last minute actually, before we ever even saw what it was about.

To explain a little bit about the Wind River, there are two tribes of us. There are the Shoshone Tribe and the Arapahoe Tribe. Any revenues derived from the land are divided 50 percent to the Shoshone Tribe and 50 percent to the Arapahoe Tribe.

We instituted a land purchase program—I do not know how long ago—but we formed that land purchase program by getting loans from the FHA at——

Mr. ALEXANDER. Is that Farmers Home.

Mr. FELTER. Yes; Farmers Home Administration.

It has been fairly successful. We have been gathering back some of our trust lands that had been deeded out to fee patent. We have been acquiring those.

We know there is fractionated interest which is a problem for the BIA, I guess, and all the other people upstairs. But to Indian people in general, it is not a problem because the white man has already taken most of the land. Any Indian who has a little piece of land is very thankful that he has that left.

I would like to speak to section 207. I do not believe, by placing a value of $100 in the previous 12 months—I do not think that applies to anything that I can see, because they have not addressed the mineral value.

Just recently the Supreme Court ruled that gravel is a mineral. We have a lot of gravel up there in Wyoming. Even if it is not being sold, it still has a value.

I agree that there must be a problem for the BIA, but, as Sonosky stated, there are a lot of oil companies that pay very little shares to many shareholders, even in small parcels.

I was glad to hear Secretary Fritz stating that 204, 205, and 206 were just voluntary. That gives us a little leeway to study the situation further before——

Mr. ALEXANDER. Do you think you could support section 7 if it were made a voluntary provision at tribal option; or the suggestion Mr. Taylor made earlier that maybe tribes could petition to be removed from or included in section 7 coverage? To make it optional either way?

Mr. FELTER. Yes; I would support it if there was a due process sort of thing in it, and then the rights of the individuals.

Also, I think a better process would be, if there is a person holding less than 2 percent, that it would be sold into the major shareholders. That would bring it back and consolidate it, which this act is supposed to do.

If it were just bringing it in at less than $100, it would not even cost that much to bring it back into the major shareholders.

Both tribes on the Wind River are not IRA tribes. We did not go under that, so we have no resolutions. We only deal by—well, we make our laws through a joint council on joint tribal matters.

That is all. Thank you.

Mr. ALEXANDER. Thank you very much. We will get your prepared statement later.

Mr. SMITH. I would like to add that, as of Friday, the Bureau just sent this out to our tribal members. In fact, I just got it.

Essentially, in a brief statement, it tells what it does and why this act is being implemented, and I do not think the tribal members on our reservation have really had an opportunity to look this over.

I agree with Suzanne Harjo that we need to be informed more seriously on what this act is: what it is considered to do. As I stated, I just got this Friday, and I imagine there are a lot of members of our tribe who have just received this information and really do not have any input, as many of the tribes have stated. I think there is more serious input concerning this, that Indian people have to consider, and I do not think that in 2 or 3 days, we can really be adequately informed on what this is going to do to the individuals who are concerned.

Therefore, I feel we have to have more time to really consider and look at this in order to make any kind of comments at all.

Mr. ALEXANDER. If you would, I would like to borrow your copy of that and make a copy of it for the record of this hearing. I will let you have it back then.

Mr. SMITH. OK. Thank you, Mr. Chairman.

Mr. ALEXANDER. Thank you. We appreciate it.

[The prepared statement and material from the Department of the Interior, Bureau of Indian Affairs, follow:]

PREPARED STATEMENT OF WAYNE FELTER, CHAIRMAN, ARAPAHOE TRIBE, ACCOMPANIED BY JOSEPH SMITH, SR., COCHAIRMAN

Mr. Chairman and members of the committee, I am Wayne Felter, Chairman of the Arapahoe Tribe, Wind River Reservation, Wyoming. With me is Co-Chairman, Joseph Smith, Sr. We are here to offer our testimony in support of the existing Indian Lands Consolidation Act and to recommend that no amendments at this time be made to it. As you are aware, this Act has been in existence

for only seven months and as such has not been fully implemented or used by the Tribes. Before any changes in the Act are made we recommend that the Act be used for a period of time.

The Act as it was passed by Congress is a well drafted piece of legislation and represents a major step in the direction of providing a mechanism for Tribes to consolidate and preserve their land base. This mechanism has been long overdue and we consider it to be a very significant and positive step on behalf of Congress to correct many of the adverse effects of the 1887 Allotment Act by allowing Tribes to reacquire those lands which passed out of Tribal lands as a result of the Allotment Act.

And as a Tribe which elected not to come within the 1934 Indian Reorganization Act, we have found it very difficult over the years to have lands acquired by the Tribe within the Reservation to be placed in trust. The Indian Lands Consolidation Act overcomes this difficulty by allowing the United States to apply Section 5 of the Indian Reorganization Act to Tribes such as the Arapahoe. This will allow the Arapahoe Tribe to preserve the Tribal land base of the Wind River Reservation.

We also feel that the Act in its present form adequately protects the interests of individual tribal members who own interests in trust allotments. The Act from our reading was carefully drafted to insure that individual interests were protected while allowing Tribes the flexibility to acquire individual interests in Trust Allotments.

Like other Indian Tribes who have their lands allotted the Arapahoe Tribe has felt the erosion of its land base. Therefore, the provisions of the existing Act are greatly welcomed by the Arapahoe Tribe. It is therefore our position that the Act remain as written for the time being.

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DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
WIND RIVER INDIAN AGENCY
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Indian Land Consolidation Act

On January 12, 1983, the "Indian Land Consolidation Act" (Title II of Public Law 97-459, 96 Statute 2515) was signed into law. Sections 202 and 207 of this act read as follows:

Sec. 202. For the purpose of this title ---
(1) "Tribe" means any Indian tribe, band, group, pueblo, or community for which, or for the members of which, the U.S. holds land in trust;
(2) "Indian" means any person who is a member of a tribe or any person who is recognized as an Indian by the Secretary of the Interior;
(3) "Secretary" means the Secretary of the Interior; and
(4) "Trust or restricted lands" means lands, title to which is held by the U.S. in trust for an Indian or an Indian tribe or lands title to which is held by Indians or an Indian tribe subject to a restriction by the United States against alienation.

Sec. 207. No undivided fractional interest in any tract of trust or restricted land within a tribe's reservation or otherwise subjected to a tribe's jurisdiction shall descend by intestacy or devise but shall escheat to that tribe if such interest represents 2 percent or less of the total acreage in such tract and has earned to its owner less than $100 in the preceding year before it is due to escheat.

The following is a brief explanation of some of the terms as used in this act:

Testate: One who has made a will or one who dies LEAVING a will. If a deceased person's property passed to the devisees under his will then he died "testate." If no part of the property of his estate passed by will but by the statute of descent and destribution, then he/she died "intestate."

Intestate: Dying without having made a valid will.

Intestacy: Dying without having made a valid will or having disposed by will a part or all of his/her property.

Devisee: The person to whom lands are given by will.

Heir at Law: He, who after his ancestor dies intestate, has a right to all land which belonged to him/her.

Divise: A gift of real property by the last will and testament of the donor.

Escheat: Reverting of the property to the tribe.

Tract: A parcel of real property (land) that is separately described for purposes of estate inventory.

Life Estate: You have the benefit of the land while you are living.

"Within a tribe's reservation or otherwise subjected to that tribe's jurisdiction" means within the exterior boundaries of a tribe's reservation as determined by the Secretary, plus any additional area over which a tribe has been determined by the United States to have CIVIL JURISDICTION.

"Earned to its owner less than $100 in the preceding year before it is due to escheat" means that during the year immediately before the death of the decendent, $100 or more was NOT paid, or payable, to the decendent from his/her interest in a tract.

When does this law go into effect?
Any Indian dying after January 12, 1983, owning an undivided trust and/or restricted interest in land is affected by this Act.

Why did Congress pass this Act?
Because of the heirship problem on Indian lands. Beginning with the age of an Indian allottee at the time he or she received an allotment together with the passage of time, the result through the years has been that land acquiring heirship status has become more and more complicated to manage and of less value to the owner---caused by death of each successive Indian heir and devisee.

Who does this law affect?
It affects all persons inheriting in Indian Land.

Does this Act affect only certain tribes?
No. It applies to all tribes.

How does it affect you?
If your land is (1) Located within the reservation, and (2) if you own .0200000 (2%) or less interest in a tract, and (3) this interest earned you less than $100 in cash during the year just before your death, your share will "escheat" to the tribe.

Does this Act affect what an Indian now owns?
No. You will not be devested of the interest you now own---but it will "escheat" to the tribe upon your death, if all three of the above conditions are present.

What should you do with your interest now?
If you are concerned that the tribe rather than your heirs or devisees will take these interests, you may do the following:

(1) Purchase additional interests from coowners and thereby increase your ownership interest to more that 2 percent; OR

(2) You, as an owner, can convey your interest to a coowner or relative and reserve a "life estate" for yourself; OR

(3) Partition or divide the tract in such a way as to enlarge your interest in a portion of the tract---only if it is possible to do so. A division is sometimes complicated to complete if there are many owners.

If you have any further questions please write or call:
Aquisition and Disposal, Realty Office, Wind River Agency,
Fort Washakie WY 82514. Our phone number is (307) 255-8238 or 8243.

Mr. ALEXANDER. We will hear from the other part of the Wind River Reservation; Alfred Ward and Ben Snyder, of the Shoshone Business Council.

Gentlemen.

STATEMENT OF ALFRED WARD AND BEN SNYDER, SR., COUNCILMEN, SHOSHONE BUSINESS COUNCIL, WIND RIVER RESERVATION, WYO.

Mr. WARD. Mr. Chairman and members of the committee, Mr. Snyder and I arrived yesterday from the Wind River Reservation, Shoshone Reservation in Wyoming. We are pleased to be here today to testify concerning the needed amendments to the Land Consolidation Act.

Mr. ALEXANDER. If you could highlight the points, we will put the whole statement in the record. We would appreciate that.

Mr. WARD. We understand that two of the objectives of this act are to assist tribes in consolidating their landholdings and cure the fractional heirship problem. We support these objectives. The Shoshone Tribe for many years has had a strong land acquisition program, and we support legislation that will help us pursue our tribal land policy.

In addition to buying fee land, we want to purchase fractional interests in allotted land. We have had little success because the Bureau insists that we buy all interests or none. If the Bureau had let us pick up the interests as they became available, we could have made big inroads on the problem over the past 25 years. Instead, more people die and the fractional interests get smaller and smaller.

We support the Land Consolidation Act insofar as it would make it easier for us to purchase fractional interests. However, the act requires us to purchase all of the interests in a tract, just as the BIA does. It is often beneficial for the tribe to purchase a fractional interest when it comes on the market without going to the trouble and expense of getting consent from dozens of other owners. The tribe can purchase these remaining interests at a later date. We request that the committee amend the act to allow us to purchase all or part of the fractional interests in a tract of land.

The act contains a section that would allow an individual Indian to buy the fractional interests by matching the tribe's offer. Our tribe would not evict anyone who had actually been making a home on the land. On the other hand, we do not wish to go to the time and trouble of getting dozens of consents and then have someone prevent us from buying the property by matching our offer. We suggest that the power to buy the land by matching the tribal offer be limited to Indians who own an interest in the land and had lived there for a significant period of time.

Our entire reservation is valuable for oil and gas. The tribe earns substantial income every year from its oil and gas resources. The standard of living on our reservation is higher than that on many reservations because of these resources. Thus, we understand how important mineral resources are to a tribe and its people. We oppose any law that allows a tribe or an individual Indian to lose their minerals.

The act would allow tribes to sell their land without keeping the mineral interests. It would also allow tribes to purchase fractional interests, including the minerals, from individual Indans. The act should be changed so that both tribes and individual Indians must keep their mineral interests when their land is sold. Our tribal mineral interests are so valuable that we do not want or need the power to sell them. And, we do not think it is fair for the tribe to be able to purchase an individual's minerals. After all, these minerals cannot be accurately appraised, and so we cannot figure a fair price. We do not want to buy mineral interests under these conditions.

We have one comment on the heirship features of the bill. We are in favor of our tribe having the power to restrict inheritance of trust land to Indians. However, we would not use the power the act gives us because it is discriminatory. It only allows us to restrict inheritance of land owned by Shoshone tribal members. We have other members of tribes living on our reservation, especially the Shoshone Bannock Tribe from the Fort Hall Reservation in Idaho. In fact, there are sometimes members of both our tribe and the Shoshone Bannock Tribe in the same family. If the Shoshone Bannocks could leave their land to non-Indians, but the members of our tribe could not, this would cause discord among the two tribes. The act should be amended to prevent this result.

We appreciate the opportunity to testify and would be glad to answer any questions.

Mr. ALEXANDER. Thank you.

Mr. Taylor has a question for you.

Mr. TAYLOR. A number of proposals today called for authorizing the tribal council, or the tribal government, to be able to restrict the inheritance of all trust land within the boundaries of the reservation, similar to the proposal you have just made. Wind River is in a rather unique situation. There are two tribes occupying the one reservation. If we were to pursue this recommendation, how would it work at Wind River? Would the Arapahoe also be able to adopt ordinances that would restrict the Shoshone Bannocks?

Mr. WARD. Yes, sir. We have the two tribes. Each tribe was given allotments in the original allotment acts. The Arapahoe were allotted separately, and the Shoshone were alloted separately. That land is passed down to the heirs. In some cases you have intermarriage, so that you would have some people who would be sharing in an allotment from both tribes. Then we have the ones from outside.

The Shoshone Bannocks, who are referred to in the testimony, were actually part of the Shoshone Nation years ago.

Mr. TAYLOR. Do you not have a potential here of a clash of ordinances or laws of the two tribes?

Mr. WARD. Not really. The two councils have two governing bodies with six members from each tribe that are elected. We have what we call the joint business council, and that is the meeting of the two tribes to enact ordinances that govern land policies and people policies, the things that deal with the people in general, but mainly land and income and minerals and that type of thing. Minerals are held on tribal land in joint ownership, so that oil and gas and these types of things—

I feel there would be no conflict because, at least so far, the two tribes work through the joint council to take care of problems.

Mr. TAYLOR. I would like to ask your counterpart; would you see any problem in what we have just discussed here?

Mr. FELTER. No; I do not see any problem. We are there together, so we have to act jointly.

Mr. Ward is right about the Shoshone Bannocks who have an interest in Wind River, being that they are from the Shoshone Tribe, also.

We have actually three factions together.

Mr. ALEXANDER. Mr. Frank Lawrence.

STATEMENT OF FRANK LAWRENCE, MEMBER, STANDING ROCK SIOUX TRIBAL COUNCIL, FORT YATES, N. DAK.

Mr. LAWRENCE. Mr. Chairman, I am a member of the council and also former chairman of the tribe. Also, I am on the econ committee, which handles all land transactions.

When this bill came before our tribe, it was very confusing, simply because we already have an act of Congress establishing an inheritance code.

I guess we are opposing this particular portion of the act simply because the act is very broad and each individual tribe has a different method of handling land acquisitions for consolidation. I think all tribes are interested in consolidation. Tribes should be allowed to enact their specific laws that deal with their land transaction programs.

I am not sure if the bill has any problems dealing with the fractionated heirship portion of the program, but as part of the econ committee that deals with the land, we have never been apprised of any problem.

As Mr. Sonosky mentioned, with the computer age, that should not be any problem. I do not think it should be a problem for the Bureau in the future. I believe they are computerizing now.

There are several parts to this bill that we disagree with. We do not believe in the 207 section. We do not believe it should be escheated to the tribe. We are opposed to it.

There are two other sections that we oppose. We feel that we should be protected from any sale of land. We are one tribe that does not believe we should sell off any tribal land. The reason for that is this is income to the tribe. This is the way the tribe operates its tribal government. Without that resource, it would be very difficult for the tribe to operate.

It was mentioned that small, isolated areas were for sale. We feel that there might be, in the future, problems with this where other people would have interest in other lands other than the isolated areas. This is where we feel this bill could probably put the burden on the tribe as far as sale of land.

We have, I would say, a very good land acquisition program. We have, also, a very good method of exchanges. We do buy, at the present time, fractionated interests. We are attempting to alleviate that problem. We know that it is a problem of small ownerships.

People are beginning to consolidate their holdings as well by allowing the tribe to exchange the small interest that they have, and we are

attempting, in these cases, to try to alleviate any areas within the land that the tribe has interest in. We are putting every effort forward to do that.

It is a problem, and the problem is the land. The land takes a lot of money to buy today. Through the new program, through the FHA program, the high interest rates mentioned, it is difficult for the tribe to operate an FHA program on a reservation, simply because they have to subsidize that program for several years with their own funds because of the interest rates.

We are currently operating an FHA loan, a little over $3 million, and it has been 10 years. We are finally seeing a headway where this land is being able to pay for itself. I think this is going to be the first year that we have seen this.

If we go on to another FHA program, which we are contemplating, we will see another 10 years of subsidizing the FHA program.

Our program on Standing Rock has worked, and we have been able to subsidize the FHA program, but there is a lot of fee land out there. Back in 1903—or 1908 and 1913—a lot of land was lost because of acts of Congress. They took a lot of land off the Standing Rock Reservation. To purchase all of this back is going to take—not all of it back, but to purchase and to be able to consolidate it is going to be a very difficult job.

I feel that each tribe has a different situation in dealing with the fractionated heirship. I think they can handle them. The tribes can handle them if they are given plenty of assistance to develop a program to deal with it. The program has to be an ongoing process for a long time.

I do not believe this bill will provide any faster method of cleaning the problem up. I think the tribes can clean the problem up a lot faster through the assistance of the Bureau and through the assistance of other programs that will provide them with funds to purchase these lands at low interest rates.

Concerning the mineral rights: if this act is amended to include any amendments that were indicated today, if the tribe has the right under the act as it has now, to sell land, the Federal Government ought to reserve the mineral rights to the tribe.

We were very concerned when this bill came to us, and I guess we are still concerned, because it does provide for some very scary outlooks in the program.

Mr. ALEXANDER. Thank you for your statement. Your prepared statement will appear in the record.

[The prepared statement follows:]

PREPARED STATEMENT OF FRANK LAWRENCE, FORMER CHAIRMAN AND MEMBER OF THE STANDING ROCK SIOUX TRIBAL COUNCIL

Mr. Chairman and members of the Senate Select Committee on Indian Affairs, my name is Frank Lawrence. I am a member of the Standing Rock Sioux Tribal Council and the former Chairman of the Tribe. I am pleased to be here today to testify concerning needed amendments to the Indian Land Consolidation Act.

We understand that one of the objectives of the Act is to assist tribes in consolidating their landholdings. The Standing Rock Sioux Tribe supports this objective. However, we do not want to see a law on the books that will allow our Tribe to lose valuable trust land or mineral resources. To prevent such losses, two amendments are needed in the Act.

The Act permits a tribe to sell or exchange trust land as part of an effort to consolidate its landholdings. We could make good use of the power to exchange, and in fact have already done this in some cases. Our reservation was opened to nonIndian settlers by the Acts of 1908 and 1913. As a result, we lost over half of our land. We now own tracts of land that are surrounded by nonIndian-owned fee land. This land is of no economic use to us. We have exchanged such isolated tracts of tribal land for nonIndian-owned fee land that is much more valuable to the tribe, and support the Act insofar as it increases our power to do this.

However, we have no use for the power to sell tribal land. This power is dangerous. Like all governments, the Standing Rock tribal government is subject to outside pressures. We do not want to be in a position where white landowners or other interested parties can scheme to buy our land.

Up to this point, there has been little mineral development on the Standing Rock Reservation. However, it is beginning to look as if part of our reservation will be a valuable natural gas area. Other minerals on the Reservation may someday be developed. We do not want to sell any of our mineral rights. There is no way of knowing how much these rights are worth, so we could not possibly receive a fair price. To protect these valuable resources, we suggest that the Land Consolidation Act be amended to require the mineral rights to be reserved to the tribe if any sale of tribal land is allowed.

Another objective of the Land Consolidation Act is to allow tribes to eliminate the fractional interest problem by purchasing such interests. We support this objective as well. However, the Act would require us to purchase all fractional interests at once. Our resources for this type of purchase are limited. But, if a portion of the interests in a tract came on the market, we could purchase those, and then purchase the others at a later date.

We are certainly in favor of the tribe acquiring as much trust land as possible. On the other hand, we must be fair to individual owners of trust land. We believe that the escheat provision in Section 207 is unfair to individual Indians. Even if a fractional interest produced only $25 in the past year, its owner may consider it valuable. This section should be eliminated altogether.

The Standing Rock Sioux Tribe has a special statute to govern inheritance of trust land. Therefore, we would not adopt the ordinance suggested in the Act. However, our experience with our law may be of interest to the Committee.

The purpose of the Standing Rock Heirship Lands Act was to keep land from passing out of trust through inheritance by non-Indians. Therefore, the Act restricted inheritance of trust land to Indians only. The Act did not restrict inheritance just to members of the Standing Rock Sioux Tribe because there are members of other Sioux tribes living on our reservation, many of whom own trust land and are related to our members. It would not have been fair to exclude these Indians from inheriting trust land on the reservation.

By the same token, our law applies to trust land owned by any Indian, not just members of the Standing Rock Sioux Tribe. It would be discrimination for us to prohibit tribal members from passing their land to non-Indians, but to allow other Indians to pass their land to whomever they wish. There would be a great outcry on our reservation if we did this. I think the same thing will happen on any reservation where the tribe adopts the ordinance suggested in the Land Consolidation Act, which limits the restrictions on inheritance to tribal members.

We have had a problem with our inheritance law that should be given careful attention by the Committee. As I explained a few moments ago, our inheritance law does not allow non-Indians to inherit trust land. Our law defines an "Indian" as a member of our tribe, a member of any federally recognized tribe, or anyone recognized as an Indian by the Secretary of the Interior. Since the law was passed there have been a number of cases where an Indian has requested a fee patent so that he can leave his land to his Indian nonmember children. This occurs because the BIA has no procedure for determining whether a particular person is an Indian, and the Indian landowner is not certain whether his children will be permitted to inherit after he dies. In one case, the landowner asked the BIA for a determination over a year ago, but received no response.

We are considering seeking an amendment to our law to change the definition of Indian. One possibility would be to allow the governing body of the tribe to decide. Other definitions are also possible. The important thing, as we have learned, is that the definition be broad enough and definite enough to prevent worried Indian landowners from asking for fee patents to protect their Indian nonmember children.

Thank you for the opportunity to testify today. I would be glad to answer questions from the Committee.

Mr. ALEXANDER. Our next witness is Matthew Cleveland of the Winnebago Tribe.

STATEMENT OF MATTHEW CLEVELAND, LAND MANAGER, WINNEBAGO TRIBE, WINNEBAGO, NEBR.

Mr. CLEVELAND. This morning, I was here early. I was here first, I think, before everybody. I was very anxious for this hearing, after hitchhiking all the way to Washington, D.C.

We are a small tribe. The Winnebago Tribe of Nebraska has elected me to serve the people on behalf of land management. I am the land-management specialist for the Winnebago Tribe of Nebraska.

We did not know of this act or law that was implemented on January 12. We had no previous knowledge. Even to this date, the people that are supposed to be in support, advising and giving us technical assistance, have very little knowledge of how this act or law is going to be implemented.

We have read the act or law itself, and we have conferred with legal counsel. We have talked with our people to tell them the best that we know with the knowledge that we have as the leaders of the tribe, what it is going to do for them. When it came to telling them what it was going to do for them or for us, it was a sad day for us to try to explain.

One, I think that the Winnebago people are the only tribe in the United States today that had five different reservations in its history. First, we were moved by acts of Congress, by the governing body of this Nation called America, the land of the free. People have come and taken from us.

Yet, the Winnebago people went out, since the time of Chief Little Priest of 1865, and served as the Omaha scouts for the U.S. Army cavalry; went against their own kind, their own people, thinking that we could live in harmony with one another over land.

Since many of the wars thereafter—World Wars I and II, the Korean conflict, and the Vietnam war, and it was a war, which a lot of people do not recognize—but today I am one of those people. I spent 11 years of my life serving in the U.S. Army.

I am proud to think that I am a native American, not an Indian—a native of this country. My people feel that way. We were given a citation for meritorious service by Calvin Coolidge, which hangs in our tribal office. He was a President of this country.

We have given many, many things to life within this Nation, but today a feeling of belonging—the roots we have pulled from the ground because I do not own enough land. It hurts.

I made my prayer this morning to my Creator, the spiritual aspect in connection with Mother Earth of Indian people. Of all these tribal leaders sitting here, not one of them mentioned it.

There is something far more that should be heard throughout this country of what God has given us, that He created for us.

To take whatever, however large or small, is not right of what we teach in this Nation, in this country.

I own a half acre of land, supposedly. Which half acre, I do not know, but I know a number of where this half acre is. It gives me a

feeling of belonging somewhere. That is the way my people feel at home.

I am also a spiritual leader because I believe in God Almighty.

For my youth, for my children, for my forefathers, because of a respect, a responsibility that I feel, this act in itself, what it is doing is in violation of my constitutional rights, or do I have any because I am a so-called Indian? No; I am a Native American.

To break and violate a law—the lawmakers themselves violated it. We tolerate it and try to amend it. The word "amendment" means to fix.

I cannot accept that as an individual, but my tribal council, my tribal leadership, we sat down and discussed this issue. We called many people. We called this lady, Suzanne Harjo. The first time I have ever seen her is today.

My tribal chairman, Mr. Ruben Snake, has called different people trying to find out what is going on with this act that is taking land away from people, trying to find out how they are going to implement it. No one knows. They said several bureaus are sitting on it. They do not know what to do with it. That is what they told us.

So we took our money and time and effort today to come here to testify that we do not like this act, this law.

We, ourselves, are doing something about this problem. The Winnebago Tribe goes on record today that we have taken our own claims money, judgment money, and put it into land acquisition. We have put a credit program together. We have put a burial program together. These are some of the things that made us lose some of our land which originally was ours. We do not intend to lose any more.

We come here today to tell you people that we can take care of our problem, if you will help us—to grant legislation and funds, to economically develop, socially improve our people, instead of cutting budgets.

The last to be recognized, the first to be cut. That is the message I would like to put down on the record. This act violates somebody's constitutional rights—mine, Matthew L. Cleveland, Sr., RA1651914 for 11 years of my life.

I come with that message today from my people.

Under section 207, again, we have problems and we have questions. What gives the Bureau of Indian Affairs the right to say that my land is only worth $100 when the white man's land right next to the borderline of my reservation is worth 10 times that amount?

Those are questions that we have. The mineral rights; who is going to put the value on that and say, "Hey, wait a minute, Chief. You are going to lose this because this cost so much and you do not make enough money. We are going to take this from you." Who has that right? Those are questions that we have.

I waited a long time to sit here and to talk to you people, hoping that you could hear the voice of the true American. Thank you.

Mr. ALEXANDER. Thank you.

I have one final question, not two final questions.

On the issue of constitutionality of section 7 that has been discussed, Mr. Sonosky, I would like your views, if you would.

Mr. SONOSKY. You asked about the constitutionality of the power of Congress to provide for escheat provisions in section 207?

Mr. ALEXANDER. Yes.

Mr. SONOSKY. Nearly every State in the Union has escheat provisions now, because the right to inherit property is derived from State law. The State can say that a wife should get a certain percentage or a wife should get no percentage but only a life estate. The State provides that if there are no heirs whatsoever, the property escheats to the State. There is no question about the constitutionality of those statutes.

Here Congress has given a broader power over Indian affairs, so that if this is what Congress decides to do, it would have the power to authorize a tribe to adopt an ordinance that would direct that property that would pass to ineligible heirs should be escheated to the United States.

The provision in section 207, to which everybody takes exception, that relates to designation of 2 percent or less of the total acreage or $100 income in the 12 months preceding the death, that is something that is unique. I have never seen that in any other statute.

Insofar as I am concerned and our tribal clients, we do not think that the Secretary should make the decision based on acreage or based on how it happened that in the 12 months preceding somebody's death there was less than $100 income. Anything can happen in a 12-month period. The question should be whether that property was capable of producing $100 income, if that is going to be the test at all.

Mr. ALEXANDER. Thank you.

I thank you all for your patience and for the very helpful suggestions that you have made today.

We stand adjourned.

[Whereupon, at 12:50 p.m., the hearing adjourned.]

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